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## GENERAL FITZ HENRY WARREN.

BY EDWARD H. STILES.*

Of the military history of General Warren I shall have but little to say, as this field has been amply occupied by Stuart's "Iowa Colonels and Regiments," Ingersoll's "Iowa and the Rebellion" and the sketches of the First Cavalry and the Twenty-first and Twenty-second Infantry regiments contained in Gue's "History of Iowa."

It is of him as a civilian that I desire, for the most part, to speak. By birth he was a New Englander; a native of Brimfield, Massachusetts, where he was born in 1816. His early education had not been liberal in the strict sense of that term, though he was a graduate of Wilbraham Academy, which was probably but little more than a preparatory school to the higher universities. But his thirst for knowledge, his literary taste and scholarly instincts were so strong that through their impulse he attained a high state of mental culture.

Though reared in the land of the Puritans, he was far from being puritanic in any narrow sense. On the contrary his nature was broad and liberal. He never achieved what might be termed a fortune, for he was destitute of those saving qualities generally necessary to acquire one, and endowed with those princely ones which dissipate accumulations well nigh as fast as they are gathered.

Though he stood high in the confidence and counsels of his party, and enjoyed political distinction as a leader there-

*See note in ANNALS OF IOWA, 3d series, vol. 3, p. 624.

in until he sided with Andrew Johnson in the historic rupture between that President and the party which elected him, this confidence and distinction were based on well-merited and worthy grounds, instead of springing as rewards for machine services. He fought vigorously for his party, but his contentions were always manly and aboveboard. I know that he naturally disdained the dishonest methods and political trickery to which mere professional politicians resort. He was altogether above this. And for this very reason, and because of his high personal bearing, he was never a prime favorite with that class. His support was founded on the best elements of the party, and every person who knew him as well as I knew him will affirm these statements.

It is true that he to some extent sided with President Johnson in the rupture before referred to, and took strong grounds against the attempt of Congress to impeach him. It is also unfortunately true, that at that moment, he fell from the political grace of that party which he had helped to found and with which he had so strongly stood, as quickly as a star thrown from its accustomed orbit.

He might still claim to be a Republican, but his caste was gone; a hue and cry was raised against him; his motives were impugned and he was nailed to the political cross. He might still claim to be a Republican by reason of his long and valuable services, though opposed to some features of the party in the reconstruction of the seceded states; to the indiscriminate and immediate conferment of the right of suffrage upon the negroes who had been lately slaves; to the extreme views of unscrupulous politicians upon the southern situation, and to the impeachment of the President. But it was all to no purpose. He had, to use the phrase of the times, become "Johnsonized." He had committed the unpardonable sin and was condemned "without benefit of clergy."

But this was not his fate alone. He suffered in most

distinguished company. In that of the illustrious Senator whose name and services adorn the history of Iowa perhaps more than any other; who was the most prominent founder of the Republican party in the State, and the first Republican Governor—James W. Grimes. And when it was ascertained that Senator Grimes had voted against the impeachment, the news was received in Iowa with general and severe disapprobation by the political leaders and the party press. In the excitement of the moment, the personal convictions, the life-long services, the cogent reasons given by the Senator for his action, were unmercifully swept away in the fury of the political blast kindled by the press. A few of the number even went so far as to impute not only party disloyalty but mercenary motives to the Senator, whose integrity, notwithstanding his saving disposition, Satan himself would not dare to tempt.

> He would not flatter Neptune for his trident,
> Or Jove for's power to thunder.

The reasons given by the Senator for his action, were, that the impeachment of the President, under the circumstances, would strongly tend to Mexicanize the government and weaken it in the eyes of the world; and that the official changes in an administration, which at most had but a few months to run, would result in corruption and disorder that would be dangerous to the nation.

I confidently believe that the sober judgment of the great mass of the people today thoroughly approves the action of Senator Grimes and his compeers. Of the nineteen senators who voted against impeachment, seven were Republicans, one of which was the justly exalted senator from Maine, William P. Fessenden, the most intimate friend Senator Grimes had outside of family relations. These Republican senators all shared alike in the denunciation which the political inquisitors hurled against them, and without exception I believe, were retired from public life.

It was thought that these severe censures, and the change

of feeling toward him on the part of old political friends, impaired the health of Senator Grimes and hastened his death. And I have no doubt that this, added to previous disappointments and sorrows, was the case with General Warren.

That both of these men thought the "times were out of joint," and that the public service and political morals had deteriorated, there is no doubt. In respect to General Warren, I had it from his own lips; and as to Senator Grimes, it is quite apparent from the following correspondence between Senator Fessenden and himself, while the latter was in Europe in search of health. On October 8, 1869, Mr. Fessenden wrote Mr. Grimes:

> I shall be a candidate, for duty to myself and the State requires it of me. If money is to be used, be it so, it will not be used by or for me. I will have no hand in corrupting legislative morals. If elected at all, it must be on my merits, and because the people so decree. For corrupt and corrupting honors, I have no desire. My hands are clean thus far, and I mean to keep them so. Any but an honest and high-minded people I have no desire to serve.

To this the Iowa Senator responded:

> Your letter of the 8th inst. has just reached me, in the midst of the Savoy Alps, being douched and soaked in hot sulphur water.
>
> Perhaps you have observed that I have resigned my place in the Senate. The truth is, the place has become irksome to me. There are so many men there with whom I have not and never can have a particle of sympathy, so much corruption in the party with which I would be compelled to act, so much venality and meanness all around, that aside from ill health, I had made up my mind that the Senate was no longer the place for me.
>
> But if you are going to be as virtuous as you say you will be, you will not be re-elected to the Senate. Why, the war has corrupted everybody and everything in the United States. Just look at the Senatorial elections of the last winter. They were nearly all corrupt. It is money that achieves success in such affairs nowadays. Thank God my political career ended with the beginning of this corrupt political era.*

I have indulged in this divergence in respect to Mr. Grimes because it illustrates the spirit of the times; because it reflects General Warren's own views in those of the Sen-

*Dr. William Salter's life of James W. Grimes, N. Y., 1876, p. 376.

ator, and serves to soften and explain his political action.

General Warren was wanting in some of the elements essential to complete political success; and because thereof he did not reach the highest points to which his real merit entitled him. He was not what is called a "good mixer." He lacked the *suaviter in modo*, and the quality of personal assimilation that go to make men generally popular. He also lacked the power of concealment, of dissimulation; the power to disguise his displeasure under a smiling face, his anger with an air of composure; and to listen to and suffer patiently, things which inwardly he had no patience with. On the contrary of these qualities, he was in appearance an aristocrat; his demeanor, seemingly haughty and imperious; and it must be confessed that these appearances did not entirely belie his nature. He was, in short, a patrician, with few plebeian qualities. His generosity and kindness of heart, however, were unbounded, and had money stuck to his fingers he would have died a wealthy man. If he were angry, he showed it. If he disliked men or measures, he was quick to declare it; and sometimes with a bitterness that was sure to provoke enmity. He was easily provoked himself, and when so, exercised a vein of polished satire that was very cutting. He was intensely bold and independent in thought and expression, and was ever unwilling "To crook the pregnant hinges of the knee, that thrift might follow fawning."

And yet with all these qualities, some of which were strongly against his political advancement, he attained to greater heights than would have naturally been expected; especially when we take into consideration that he was not a politician in the ordinary sense of the term, and that politics was more an incident to his business than a pursuit. In 1847 he came from his native state, and settled in Burlington where he engaged in business. He was then about twenty-seven years of age. In 1849 he had gained so much distinction that he was appointed by President Taylor

Assistant Postmaster General. The appointment and removal of postmasters throughout the country fell within his jurisdiction, and in this and other matters pertaining to the department, he displayed a high order of ability, which attracted the public attention and made him the most widely distinguished national character that Iowa, as yet, had had at the Capitol. Had he remained in this position, it is probable that higher honors under the administration would have attended him. But, true to himself and the instincts I have pointed out, he threw up the office in disgust, and retired to private life because Mr. Fillmore who had become President by the death of President Taylor, had allowed himself to be persuaded into signing the new fugitive slave law. This, however, augmented still more his national reputation. Not long thereafter he was made Secretary of the National Executive Committee in the Scott presidential campaign. In 1855 his name was strongly before the legislature as a candidate for United States senator to succeed Gen. A. C. Dodge. Among the candidates, at the outset, his name was the most prominent, but he was defeated by James Harlan, whose election was a surprise to the people of the State.

This unexpected result was brought about by the following circumstances: Harlan was a talented young member of the Methodist clergy, who had as yet gained no particular distinction. He had, however, been the Whig nominee for State Superintendent of Public Instruction. His opponent was Judge Charles Mason. Some of the votes at the election, evidently intended for Harlan, had been variously labeled for "James Harlin," "James Harlond," "James Harlam," and some simply for "Harlan." In canvassing the vote, Elisha Cutler, the then Democratic Secretary of State and who was charged with canvassing the vote, counted these votes separately, instead of counting them all for James Harlan as they should have been, and which would have given him a clear majority. The result was that Mr.

Harlan was counted out and the majority given to Judge Mason. This was felt to be an outrage by a large number of people irrespective of party, and the result was to bring the injured party prominently before the Fifth General Assembly as a candidate for United States senator. Had it not been for this circumstance, Fitz Henry Warren would in all probability have received the distinction of being the first Whig or Republican United States senator from Iowa.

When the dissolution of the Whig party became evident, he actively joined in the organization of the Republican party; and in 1856 was made one of the delegates from Iowa to the first National Convention of that party. He was by common consent made chairman of the delegation. He continued to take an active part in politics, especially after the organization of the Republican party, when the extension or non-extension of slavery into the territories became the supreme issue; and to this issue he devoted his best energies on the hustings and elsewhere. Upon the election of Mr. Lincoln, his name was conspicuously mentioned for the position of Postmaster General, and it was believed he would be appointed. But he was not. The post of Assistant Postmaster General was tendered to him but declined.

In 1861 he became a member of the editorial staff of *The New York Tribune*, and startled the whole country by a series of brilliant articles bearing the insignia of "On to Richmond," which was then the Confederate Capital. He believed, and vehemently believed, that the true policy of the nation was to make a supreme effort to crush the rebellion at the outset by an overwhelming force, and that the fall of the Confederate Capital under a crushing blow would greatly tend to seal the fate of the confederacy itself; and to this end he trained his editorial artillery, upbraiding the dilatory steps of those in power, and urging in most virile and striking language a forward movement. One effect of these articles was to stamp the author as one of the ablest journalists in the country, and a unique commander of the English language.

They came at a time most auspicious for their object. The people were perplexed with the inaction of the gathered forces; with what was termed at the time the "masterly inactivity" that prevailed at the Capital, and tired with the stereotyped daily telegraphic heading that had so long appeared, of "all quiet on the Potomac." They aroused anew the impatience of the people with the lethargy that seemed to reign at headquarters. They came like the arousing tocsin of war, and stirred, from one end of the country to the other, the restless patriotism of the people, as did the Marseilles hymn through the streets of Paris.

Believing that it would be of interest to the reader, as well as illustrative of my subject, I took the pains to procure from New York one of these articles, from which the following extracts are made:

TO RICHMOND! TO RICHMOND! ONWARD!

*From Our Own Correspondent.*

WASHINGTON, May 27, 1861.

There is quietness and subordination in Alexandria. The power of the Government and its emblem are visible, respected, and obeyed. On Arlington Heights stands the soldier, with musket at shoulder, looking toward that far Southern horizon which measures the limit of our domain, and marks the point of his destination. . . . Fifteen thousand men now leave footprints on the soil of Virginia in the stern tread of men who bear with them the accumulated resentment and the inflexible justice of a people called from home and hearthstone to defend the institutions of our commonwealth from robbery and ruin. Cannon in embrasures and muskets behind breastworks have their muzzles toward Richmond. Mr. President, Lieut.-Gen. Scott, Messieurs Secretaries, *when* shall the bayonet flash to the "Forward!" of the Centurion of the conquering line? . . . The voice of the public, from the gentle heavings of the Pacific, over the desolate wastes of the wide central basin, from the gulch and gold-washing, from the prairie and lake coast to the myriad voices of the Atlantic margin, gives forth the swelling cry "Forward!" . . . From the heights of Shochoe Hill, looking away toward Monticello, read, to an air vocal with acclaims, the charter of our freedom, on a soil which held in living and in death the author whose imperishable fame smiles in the dying glory of a State which now stones the prophets of its old religion. . . .

"On to Richmond!" then, is the voice of the people. Unloose your chivalry, Man of high command! Let them strike home to the heart of

Virginia in the early part of June. Do you need *men?* Publish once more the "Arriere Ban." Call out the thousands who are now panting for the charge. Do you want money? Call for the treasures of hoarded capital full to congestion, as are the coffers. Use it for food in the field and furnishings for the march, and *not* for subsistence in camp or for the bread of idleness in the bivouac, and you shall have ingots at your need. Who cares to ask whether Treasury Notes are at eighty cents or par? Who inquires whether United States "6s" are worth a full hundred or ten per cent under. War bulletins, and not Rowlet's interest tables are the reading of the public. The victim strangling and struggling for life in water, does not think of his check book or his banker's balance. It is for existence that we poise the uplifted hand to strike. The country now, patrician and plebeian, would hail the sight of a quarter of a million of soldiers under canvas or in line of advance, with home reserves of equal footing. If you would spare carnage, overshadow resistance by the presence of invincible numbers. We do not ask you—for I speak as a Tribune of the people—to push to the tidewater of the Gulf *now*, but we do beg and implore of you to pierce the vitals of Virginia, and scourge the serpent-seed of her rebellion on the crowning heights of Richmond. The stock exchange of your marts, the graduated barometer where the strength of power and the confidence in Government can be read, will show a rising fluid. The meshes of foreign diplomacy winding about you, when you are in a weakness confessed by hesitation and inaction, will fall apart like flax at the touch of fire, when you shake yourselves in the risings of your might. Thirty-four stars in the firmament of the Capitol of Virginia, with the attending stripes, will stir the blood of the two Continents. . . . The dollar worship is not the true devotion of the land. Years of peace, and its pursuits—accumulations of capital, ingathering of foreign and American art, collections of libraries, adornments of country seats, have reduced but not extinguished the fires of ancient wars in forest and field. Under flannel and homespun beats the knight-errantry of Templar and the Fleece. Do you reply that we are to have this capture only by a conflict and loss of blood? Granted. But who ever knew a war without battles, or a campaign without carnage? If victims must be had, as we know they *must*, let the offering be early. No one who presses on to the accomplishment will stop to calculate whether he is to come back to the music of a quick-step, or the measure of a dead march. It is not here that private grief, in foreboding, is to stand in the path of high achievement. If a voice is to be heard in Rama, let it wail out *now*. . . .

Again we repeat, "On to Richmond!" Point your standards and your steel toward this weird sister, who has said and sung incantations of treason for twenty-five years. . . . Let her still sowing of the wind have a generous harvest of the whirlwind, and let it be *now*. . . . To Richmond! To Richmond! As the armies of Europe stood amid the wreck of the French Empire at Leipsic and saw the narrow "chaussee" of the Elster, with the living masses of the retreating route go down, with its falling arches, into the engulfing flood—peer and peasant—marshal

and soldier, . . . from the stunned and shuddering ranks, jubilant in the coming redemption of an awed and abject hemisphere, went up the shout "To Paris! To Paris!"

So we, with eyes upon our enfranchisement, which shines in the near coming, take the cry from history, and ring out from the gathering army waiting for its signal—To Richmond! To Richmond!

It was claimed on the one hand that the general effect of these articles on the army, was to cause it to move; that the movement was premature—like that urged by the Roman Senate upon Pompey against Caesar at Pharsalia—and that the disaster at Bull Run was the natural consequence. On the other hand, it was claimed that they "evinced a genius that caused a national recognition, and in truth-telling, rose to the rank of a bold seer in the morning of the rebellion;" and that the disaster was solely attributable to the errors of military commanders.

Who shall tell? "The uncertainties of war," are as familiar to our ears as household words. But one thing is sure, that if they had been solved in our favor, and victory taken the place of defeat, General Warren would have been fairly covered with glory. And who shall say, that if the movement had been successful and the rebel Capital taken, the end of the rebellion would not have been sooner reached?

The personal result upon General Warren was his retirement from *The Tribune*, then the most widely circulated and powerful journal in the country, to commence his military career as Colonel of the First Iowa Cavalry, in the summer or fall of 1861. In August of 1862, he was made a Brigadier-General and severed his connection with the regiment to take the command of a brigade.

General Warren did not reach that eminence as a soldier which was expected of him. The reasons for this to my mind are apparent. In the first place, during his connection with the regiment and until his promotion as Brigadier-General, the opportunities for distinction were limited by the character of warfare in which the regiment was engaged pending that period. The regiment, which was a very large

one, was divided into battalions and put upon detached or outpost service in Missouri. And while this service was of a most trying, dangerous, severe and valuable character, it was for the most part directed against small forces, the suppression of the guerilla bands that numerously infested that state; the protection of Union men, and like services. There never was a finer regiment of volunteer soldiery nor one more perfectly disciplined. Gen. Warren was one of the finest and strictest of disciplinarians, and under his training the regiment had acquired the reputation of being the best disciplined of all the splendid ones which Iowa sent to the field. Nor were any of them better officered from the head to the foot. But, up to the time of which we are speaking, it was not engaged on fields where large forces were collected; where great pitched battles were fought, and where opportunities prevailed for brilliant exploits. Nevertheless, he gained military recognition, and was made a Brigadier-General on the date before stated.

But here the same fate awaited him; the same lack of opportunity to highly distinguish himself in great engagements where large armies encounter and "fields are won."

There seems indeed to have been a studied effort to thus place and restrain him; and for such course of action on the part of the controlling powers, there unfortunately existed more or less forcible reasons; the principal one of which was a spirit bordering on insubordination inherent in the very being of General Warren. A disposition to severely criticise his superiors and question their orders. His maxim was *aut Caesar, aut nihil.* This quality was conspicuously exhibited in the "On to Richmond" phillipics. And it was subsequently displayed in other instances, the most important of which I will relate.

General Warren, by reason of the characteristic just referred to, having quarrelled with General Totten, and other generals who outranked him, desired to rid himself of all superior authority in the field except that of the Com-

mander-in-chief. He therefore applied to General Curtis, commanding the Department, to be given a district in which he should have the supreme command and not be subject to orders from any less authority than the commander of the Department, and required to report only to Department headquarters. General Curtis, who knew of the disturbed conditions referred to, and the causes from which they arose, gladly acceded to General Warren's request, and carved out a district in southwestern Missouri for him, and gave him a fine brigade composed of infantry, cavalry and artillery. While at his headquarters in this district he received an order from the General commanding the Department to march at once with his command and report to General Davidson at or near Salem, Arkansas. From the effect of severe rains, the roads over which his command would be obliged to travel were in a fearfully bad condition, but not impassable, as the sequel will show. The principal obstacle was the fact that General Davidson outranked him. He was not the commander of the Department, and he accordingly determined to disobey the order, on the ground that the condition of the roads was such that he could not execute it.

At the expiration of a week he received another order directing him to turn his command over to the next ranking officer, with directions to carry out the order he had disobeyed, and report himself at Rolla to explain his disobedience of the order referred to. From thence he was ordered to St. Louis, where instead of placing him on trial by court-martial, his old and very kind friend, General Curtis, assigned him to duty elsewhere.

But the new fields assigned him furnished no adequate opportunity for the superb talents he possessed as a soldier and commander (barring the quality before mentioned), and which if they had been accompanied by a proper spirit of subordination, would have undoubtedly led him to signal military distinction.

The occurrence I have just related in respect to General Warren, does not appear in either of the histories hereinbefore referred to. It is the result of private communication; but from one who was present and of such high standing and authority that his word would be taken as a verity in any part of the nation. This gentleman, whose name I do not feel privileged to disclose, in a communication referring to the affair, uses this language: "This incident in the military career of General Fitz Henry Warren, with others like it, shows that he had a mental idiosyncrasy that made it impossible for him to obey orders, and is the real reason why he attained to no greater distinction during the civil war."

It will thus be seen that my opinion of General Warren's qualities in the respect referred to, and the effect of those qualities upon his military career, is confirmed by an authority much higher than my own. It is unpleasant for me to write these lines concerning this remarkable man, but it is necessary in order to verify the correctness of my estimate of him, and due to the truth of this memoir.

Let me now resume his civil career where I left off. In June, 1863, the Republican State Convention was held at Des Moines. It was my fortune to be present and a spectator of the proceedings. It was supposed that the principal contest for the gubernatorial nomination would lie between Fitz Henry Warren and Elijah Sells; and had it thus remained there is no doubt but that the former would have been the nominee. His long and conspicuous services, it was thought, entitled him to this recognition, and at the outset his supporters were greatly in the majority. He was there, from the field, in person. So also was Col. William M. Stone, of the Twenty-second Iowa Infantry, with his wounded arm in a sling, fresh from the field before Vicksburg. His name was introduced into the canvass.

The night before the convention a large and enthusiastic meeting was held. It was opened by an able and polished

speech from General Warren, in the course of which—again true to his instincts—he made some allusion to his principal competitor, Mr. Sells, which was not well received by the friends of that gentleman and tended to incense them. Mr. Sells not being much of a public speaker, loud calls were made for Colonel Stone, in response to which that gentleman, with his suspended arm, came to the platform, and without any reference to the canvass or its candidates, made the effort of his life in a speech of stirring eloquence, touching the general cause for which the government was struggling, the valor displayed by the Iowa soldiery on the field, and the great achievements of the Republican party.

The effect of this speech on the proceedings of the convention was plainly visible when it met the next day; and when Colonel Stone himself marched down the aisle of the convention hall, his towering form was greeted with a tremendous outburst of applause. The enthusiasm was infectious. The supporters of Mr. Sells were ready to turn their forces to Colonel Stone. At this juncture, the conspicuous figure of General Warren was seen to arise in the midst, and with a strength and grace that were superb and that strongly ingratiated the convention in his favor, and aroused anew the enthusiasm of his friends, withdrew his name from the contest. The nomination of Colonel Stone followed.

It was thought by many, that if General Warren had not thus withdrawn, the sober, second thought of the convention would have nominated him. In my judgment he ought to have been nominated. His high ability and eminent service entitled him to it. He undoubtedly thought so himself, and felt stung to the quick by this verification of the old adage, that Republics are ungrateful.

After the close of the war, in 1866, he was elected to the State senate from Des Moines county. Near the close of the session, he received the appointment of Minister to the Republic of Guatamala. He chose for the legation, quarters in the capital city befitting his station and the government

he served. He performed the duties imposed upon him with efficiency, and was in great favor with the high-bred Castilians, quite a number of whom resided there. No Castilian, I am sure, could outshine him in courtliness of manner. He was perfectly at home in that line.

The last time I saw him was immediately after his return from that mission. It was at the Savery House in Des Moines. We had a delightful conversation. It was mostly reminiscent along the line of persons and events mutually familiar, but much of it was descriptive of Guatamala and her people. He seemed somewhat careworn, but his mental vivacity and his interest in all affairs pertaining to Iowa, were unabated. For a considerable period after that he was engaged in literary work at Washington and New York as a writer for *The New York Sun*, and was subsequently engaged for a time in railroad building in Iowa. Following this, he permanently took up his residence in the East, and died there in 1878, at the age of sixty-two.

I was a member of the Iowa senate with him at the session hereinbefore referred to. He was easily the most remarkable and accomplished man in that body. To a strong literary taste and wide reading, nature had added a brilliant mind and the gifts of genius. There was scarcely any field of literature that his research had not to some extent invaded, and his acquaintance with belles-lettres remarkable in one who had not made it a study. A single instance will illustrate his spirit of research. On going to his room one evening I found him reading Lingard's history of England. I remarked, that with Hume and Macauley, with whom I knew he was familiar, I did not see why one should care for anything else on that subject. His reply was, that Lingard covered most of the ground embraced by both the authors named; that Hume was an intense Tory, and that subsequent historians had spent a good deal of their time in correcting his misrepresentations (which is true); but his chief reason was, that while other his-

torians had written from the Protestant point of view, Lingard had presented the Catholic side; that he had done it fairly and authentically, and that it was necessary to read both sides to get the real truth.

In appearance he was most distinguished. His high-born instincts and great culture were traced upon his face and visible in his bearing. Had he been set down in the French Assembly or in the British House of Lords or Commons, he would have attracted immediate attention. As an orator, he was rather too refined and classical for the ordinary hustings, but in the forum he was one of the most polished. But polish was not the only quality of his oratory; it had also the vital ones of pungency and force; and the argument was well adhered to, and enforced in a voice seldom rivaled for its sonorous strength and far-reaching power. While his discourse was sometimes ornate it was never vapid, and flowed like a "current that worked its way into the light through the filtering recesses of thought and learning." These varied accomplishments were backed by a highly sensitive nature, and a spirit as proud as Lucifer. He had the consciousness that he was born to command, and could not brook opposition or the control of those whom he regarded as his inferiors.

But alas! it was these characteristics that thwarted his progress all along his pathway and prevented him from attaining that eminence to which his talents entitled him. He was brave and valorous as a knight and in appearance every inch a soldier; but instead of rising to that distinction which he would otherwise have obtained, he narrowly escaped a court-martial for insubordination. His "On to Richmond" articles—however well founded they may have been—assuming to direct the army over the head of the Commander-in-chief and his generals, embarrassed both the administration and *The Tribune*. Instead of biding his time when he lost the gubernatorial nomination to Stone, and trusting to the people's returning sense of justice to right his wrongs, he wrecked his political future by taking a different course.

He doubtless lived long enough to understand the causes which had so seriously interferred with his advancement. Of him it may be fittingly said what Justin McCarthy has said of Lord Durham: "His proud and sensitive nature could ill bear the contradictions and humiliations that had been forced upon it. He wanted to the success of his career that proud patience which the gods are said to love, and by virtue of which great men live down misappreciation and hold out until they see themselves justified, and hear reproaches turn into cheers."

I desire to correct here a statement, founded on erroneous information, contained in a paper prepared and read by me before the Pioneer Law Makers' Association of Iowa at its meeting in 1898, entitled "A Glimpse of the Personnel of the House of 1864 and Senate of 1866," to the effect that General Warren had died in a hospital under distressing circumstances. Instead, while he had previously been in a hospital, he died where he was born, at Brimfield, Massachusetts, at the home of a near relative. Hitherward, broken in health and exhausted by the efforts and disappointments of his strenuous life, he turned his weary footsteps, to rest and to die amid the scenes of his childhood.

I have endeavored in what I have thus written, to give a faithful picture of General Warren, and in such manner, that the reader may gain therefrom a pretty clear conception of him as he really was. If I have failed in this, I hope some more competent survivor of his time will do better.

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Iowa Flour to Pike's Peak.—A train of seventeen wagons loaded with forty hundred of flour each started from Council Bluffs to Denver City on the 4th inst. With Pike's Peak region for a market in the west and the rest of mankind for the eastern portion of Iowa, this year's crop ought to bring some money.—*Dubuque Herald, September 19, 1860.*

# LEGISLATION IN IOWA PRIOR TO 1858.

BY F. I. HERRIOTT,
*Professor of Economics and Political Science in Drake University.*

"In modern legislatures we find our lawmakers chiefly concerned with promoting the rights of property and the privileges and the profits of corporations as against the rights of man and of Labor."

It was the expression of this sentiment, by a leading representative of labor unions in the United States in the course of an address to a mass meeting, some years ago, in the capital city of our State that first suggested to the writer to analyze and compare the enactments of Iowa's legislature and from the experience of a typical state to determine if possible what the real nature and drift of our laws have been. The sentiment is quite common and, if true, is a matter of serious moment to the nation; for no people can long live content, let alone prosper in their industry, under the domination of unjust laws and persistent and oppressive favoritism in their enactment and execution.

## I.

In what follows there is presented some of the results of what may be called a study in the statistics of Iowa's statutory enactments during the first twenty years of the State's legislative history. In a subsequent paper the results respecting a similar study of legislation since 1858 may be given. The time here covered divides naturally into two divisions that constitute two well marked periods in the State's career. The first is the period of the territorial government from 1838 to 1846, and the second is the period of the first State government under the constitution of 1846, from 1846 to 1858. In the first the lawmakers were subject to various national statutes that served as a quasi constitution and to the somewhat dim, uncertain and distant supervision of Congress; in the second period they were

restricted only by the restrictions of the supreme statute set above and roundabout them by the people themselves. But while there was a fundamental change in the political status of the sovereign power and in the jurisdiction of the law-making bodies we shall find no marked change in the character of the legislation in the two periods prior to 1858, although there begin to appear in the second period signs of the changes in the direction of legislative regulations that became prominent from 1860 down.

In many respects the legislature was much less restricted during the first twenty years than subsequently. In matters of local, and special or individual concern there were but few limitations on the power of the territorial legislature to pass acts benefiting or adversely affecting localities, particular interests, corporations or persons. Under the provisions of the "Organic Law" creating the territory the legislature was given power over "all rightful subjects of legislation"—a grant of power world-wide in its scope. Under the first constitution special legislation respecting business corporations was prohibited. Banks of note-issuing power were prohibited. Another fact of great importance in explaining the drift of early legislation in these two periods is that Iowa was in the pioneer and formative stage of her history. Travel and traffic were primitive. Commercial and industrial interests did not begin to exert upon the life of the people a positive influence that compelled much legislative attention until after 1850. So that if the golden age of laws, as well as of manners and morals, lies in the past the special virtues engendered by pioneer conditions must become apparent in the superiority of the laws enacted.

One does not of course comprehend the entire body of laws that regulate men's relations and conduct in society in studying the formal enactments of the legislature. Besides the vast and complex mass of rules known as the common law which we inherited along with our governmental institutions from England, we have the extensive additions

made thereto by our courts of law whose rulings and decisions affecting innumerable relations of life, not specifically regulated by statute, constitute a body of law fully equal in importance, if not in bulk, to that of statutory law. But in addition to all this we should still have the laws of our national government and the decisions of our federal judiciary to consider, before we could compare the laws governing our citizens and institutions. This, however, is to be observed of statutory laws. They conspicuously represent the direct and conscious expressions of public policy and determination. What is designated as "Judge made" law, while no less authoritative or influential, develops in a manner wholly different from legislation. The rulings of courts come unannounced and unexpected; they enter into the popular consciousness and the people adjust themselves to them, whereas in legislation, social, economic or political conditions resulting in mal-adjustments first produce popular demands and in full consciousness of the need for better regulation, legislation follows in response.

Before plunging into the midst of things a preliminary caveat may here be given. The writer does not delude himself with the notion that it is easy, or indeed possible, completely to indicate the nature of legislative enactments by statistical exhibits and comparisons. The real significance of a legislative measure often cannot be even surmised from its provisions because its enactment may have been the feeble outcome of fierce factional strife or the pretense of shrewd men, who, for political reasons divert and delude the public by skillful manipulation of words and by parliamentary maneuvers; while on the other hand a compromise may be forced by an aggressive minority, or by insurgent forces in the dominant political party threatening secession and union with the minority party, that means the initiation of important modifications in the nature of laws and of public policy—yet but little of this can be successfully shown in statistical exhibits. Moreover the main interest of the

people during legislative sessions generally centres about one or two measures urged or pending. Their passage or attempts thereat absorbs the major portion of general legislative thought and activity particularly if they happen to be measures that develop sharp divergence in partisan interests. The multitude of measures that are put through and which constitute the regular routine work of the legislature attract but little attention. Such a study as the writer has ventured upon must perforce be concerned wholly with the chief characteristics of the laws, not with a comprehensive consideration and comparison in detail of all the provisions of acts. This restriction, while it is a serious limitation does not prevent us from so classifying and presenting the laws as to make manifest their general character, their predominant tendencies and most of their peculiarities. It is only when we view legislative activities in the aggregate, when we realize their mass and general composition that we can really know the drift of legislation. Extraordinary circumstances that may give prominence to one or two measures in a legislative session do not necessarily indicate the vast fundamental interests and common needs of the public or the general necessities of governmental administration, the consideration of which constitutes the main task of legislation. The main lines of such developments can only be perceived when we contemplate the items or units of the aggregate, classified under logical schedules that show the co-relations of legislative enactments.

If one would fully understand the significance of legislation in such a commonwealth as Iowa he must appreciate the social, industrial, religious and political conditions and atmosphere that surround and animate the lawmakers who enact its provisions. For in the physical environment and economic life, in the social and political inheritance of the people such as the ideas and institutions that they have brought with them into the State or that have developed in the course of the State's history, in these we find what the

metaphysicians would call the "efficient causes" that produce the political demands that materialize in legislative regulations of the people's affairs. In short we should be familiar with what we may call the social psychology of the people. Here one may find an exceedingly interesting and instructive field for investigation in the fusion of race elements and in the conflict of various political, social and economic interests of the various classes that settled in the State in its formative period.* Another preliminary investigation that would afford us much instructive data, would be a study of the character of the men who made up the assemblies with respect to the nature of their general education and their occupations or pursuits prior to and during their membership. Their ordinary interests in life, their occupations and associations determine largely their "state of mind" towards political questions which is the all important thing in politics and legislation. Another matter of great consequence in explaining the character of our laws that usually is not much thought of in popular discussion, is the parliamentary methods that prevail in legislative proceedings. The influence of the procedure in the drafting of proposed laws and in the consideration of their provisions and the wisdom of their enactments is at once subtle and potent; and in these respects American state legislatures are behindhand. Especially do they fall short as regards thoroughgoing examination of projected laws and vigorous revision during the various stages of passage with a view to precision and their harmony with existing laws. Needless to say this has resulted in much ill considered legislation that entails both redundancy in laws and a vast amount of judicial execution of invalid statutes.†

*The writer has already pointed out some of the main lines of social and political development that must be taken into account in explaining the course of legislation prior to 1858 in an article in these pages entitled, "The Transfusion of Political Ideas and Institutions in Iowa" (ANNALS OF IOWA, vol. vi, pp. 46-54).

†The writer has dealt at some length with legislative procedure in Iowa as it affects the State's budget and finance in his studies of "Institutional Expenditures in the State Budgets of Iowa," published in the *Bulletin* of the Board of Control in

But we shall not now enter upon any of these interesting phases of the subject. We shall deal here first with the bulk of the legislation projected and actually accomplished; and second with the character of the laws passed during the two periods covered.

## II.

The membership of the territorial legislature remained throughout, 13 in the Council or upper house and 26 in the House of Representatives. By the act creating the territory, sessions of the legislature were annual and the length of the session was limited to 75 days. At first the governor was given the power of absolute veto, the chambers being unable to pass bills over his adverse action by subsequent votes.* Under the first State constitution the General Assembly, as it was and is now designated, met biennially. The governor's veto could be overcome by reconsideration and a two-thirds vote. Prior to 1858 the membership of the lower house ranged from 39 to 72, and that of the Senate from 19 to 36. There was no limitation on the length of session except indirectly. The compensation of the members was limited to two dollars per day for a period of 50 days. If lawmakers were all philosophers and savants this limitation might not have interfered with prolonged deliberation if the public needs called for it, but with average men who for the most part were elected it may be presumed that the short allowance in remuneration tended decidedly to short sessions.

Our understanding of the laws actually enacted would be greatly enhanced if we could analyze the character and know the fate of the numerous bills introduced at each session that failed of passage either through neglect or deliberate rejection. But such knowledge is unattainable for the

1901, 1902 and 1903, especially part V "Legislative supervision and Control of Institutional Expenditures," vol. IV, 437-451, and in particular the section (not yet complete) dealing with "The Preparation and Passage of the Budget," vol. V, 214-237.

*Governor Lucas was a strict constructionist and his insistent vetoes caused such a serious deadlock that his power of absolute veto was taken away by Congress in 1839.

earlier period of Iowa's history here considered. The originals of bills introduced have not been preserved until 1860, and thereafter until about 1870 the files are incomplete; and the purport of bills can not be discerned always with certainty from their titles. But their number and somewhat of their conclusion we can give.

During the first session of the territorial legislature that convened November 12, 1838, and lasted 54 days, adjourning January 25, 1839, there were 159 bills introduced in the House and 59 in the Council or upper house—a total of 218 laws proposed, or an average per member of five bills. Of these bills 147 were passed by both Houses. Seven bills however, encountered Governor Robert Lucas' veto. The total output was 140 laws. Besides these 12 resolutions were passed that may be regarded as quasi statutes, as for the most part they affected in varying degrees the disposition of funds, the conduct of officials and signified public desire and policy. The percentage of laws passed to bills introduced in that first session reached 64 per cent., the largest proportion reached by any session in the time of the territory. Their bulk in pages—octavo size—all told was 513. This was more than twice the bulk reached by the laws passed by any subsequent legislature until we reach 1850-51, when the code of 1851 caused the grist to bulk big. The book of laws of that first session however, may be regarded more or less as a compilation that approximates a code, although its authors made no pretense to scientific or orderly arrangement other than the primitive alphabetical order. But more of its contents later.

Summarizing briefly the work of the territorial legislature, the average length of their regular session was 51 days or 47 days if we include the two extra sessions in 1840 and in 1844. The number of bills introduced at the sessions ranged from 87 to 215 in the House and from 48 to 152 in the Council.* In one session there were more bills intro-

*The figures above contain some of the resolutions and memorials. In some of the sessions the files were not classified and each consecutively numbered as in the journals of the General Assembly.

duced in the Council than in the House, viz: in 1846 when the numbers were 132 and 114 in the respective houses. The proportion of Council bills to House bills ranges from 11 per cent. in the Council, to 89 per cent. in the House, in 1840, to 47 per cent. in the House, and 53 in the Council, in the eighth and last territorial session in 1845-46. As a rule the proportion of bills introduced in the Houses corresponds to the respective membership. The number of bills passed by both Houses ranged from 41 and 18 in the extra sessions, and 71 in regular sessions, to 147, the number passed by the first legislature. Of these Governor Lucas vetoed 12, Governor Chambers 4 and Governor Clarke 3. The bulk of the laws placed upon the statute books varied from 513 pages in the first session down to 14 pages in the extra session in 1844. The percentage of laws passed to bills introduced varied from 16 per cent. to 64 per cent.

In the work of the General Assemblies under the State constitution of 1846 we find about the same amount of legislation attempted and accomplished. The House bills introduced numbered from 144 in the first session to 357 in the sixth Assembly in 1856; while the Senate considered bills aggregating 107 in the third regular session to 253 in the sixth. In the regular sessions the bills passed by both Houses ranged from 104 in the third to 267 in the sixth. Governor Briggs interposed his veto in one instance in 1848. Governor Hempstead objected to 8 bills during the third and fourth Assemblies and vetoed them; while Governor Grimes was adverse to 10 measures presented to him. Sundry resolutions and memorials to congress were also passed. The number of laws passed varied from 112 to 260. Their bulk varies from 204 pages in the first session to 467 in the sixth in 1856. Those of extra sessions were less in amount. The percentage of laws enacted out of the bills introduced was somewhat less on the average than during the territorial government. In the session of 1850-51 the Mason code was considered and adopted, being introduced and passed as one bill; it contained 209 chapters totaling 469 pages. In many

respects it was a reenactment of laws in force, yet in the thoroughgoing revision and codification to which they had been subjected by Judge Mason and his colleagues of the code commission, its chapters constituted new acts of legislation as they were adopted.

Comparing the gross results of legislative efforts in the two periods prior to 1858, the thing most noticeable perhaps is that the same general average, as well as approximately the same aggregate results were attained in each period. Under the territorial government the House considered 1446 bills, and the Council 700; during the State government the House passed upon 1430 and the Senate 996. In the first period 903 bills were passed and 19 were vetoed, and in the second 1053 were passed and 19 overruled by the governors. The mere bulk was 1538 pages for the eight years under the territory and 2336 pages under the first State constitution. The average length of the session was 47 days in the first period and 42 in the second. Forty-four per cent. of the bills introduced became laws in the territory and 42 per cent. under the State government. As there were ten sessions in the first and but eight in the latter period it is apparent that either the lawmakers of the territory were not so anxious to indulge in the art of lawmaking as were their successors in the General Assembly, or the developments in the political, social and industrial or economic life of the people in the territory had not produced conditions that generated such urgent demands for governmental interference and regulation as was the case during the first years of the State government. When we come to analyze the acts of the two periods we shall find but little general difference in the character of the legislation, and the latter conclusion just suggested is probably the one more warranted. In the two tables that follow (I and II) will be found most of the items or data upon which the foregoing is based.

We may now proceed to the analysis of the laws themselves.

# TABLE I.

## DATA RELATIVE TO TERRITORIAL LEGISLATION IN IOWA.

## 1838-1846.

| Session. | 1st | 2d | 2d ex. | 3d | 4th | 5th | 6th | 6th ex. | 7th | 8th | Totals |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Date convened | Nov. 12 1838 | Nov. 4 1839 | July 13 1840 | Nov. 2 1840 | Dec. 6 1841 | Dec. 5 1842 | Dec. 4 1843 | June 16 1844 | May 5 1845 | Dec. 1 1845 | |
| Bills introduced in House | 159 | 174 | 215 | 147 | 149 | 131 | 170 | * | 87 | 114 | 1346 |
| Bills introduced in Council | 59 | 48 | 28 | 72 | 152 | 87 | 74 | ..... | 65 | 132 | 717 |
| Total introduced | 218 | 222 | 243 | 219 | 301 | 218 | 244 | ..... | 152 | 246 | 2,063 |
| Proportion House Bills | 73 | 79 | 89 | 77 | 50 | 61 | 70 | ..... | 58 | 47 | 66 |
| Proportion Council Bills (%) | 27 | 21 | 11 | 33 | 50 | 39 | 30 | ..... | 42 | 53 | 34 |
| Bills passed both Houses (%) | 147 | 99 | 41 | 101 | 129 | 86 | 144 | 18 | 71 | 124 | 903 |
| Bills vetoed by Governor | 7 | 4 | 1 | 46 | 2 | 2 | ..... | ..... | 2 | 1 | 19 |
| Laws enacted | 140 | 95 | 40 | 101 | 127 | 84 | 144 | 18 | 69 | 123 | 884 |
| Ratio of Laws to Bills (%) | 64 | 42 | 16 | 4 | 42 | 38 | 59 | ..... | 45 | 50 | 42 |
| Joint Resolutions | 12 | 32 | 4 | 4 | 9 | 10 | 20 | 2 | 18 | 26 | 137 |
| Bulk in pages | 513 | 199 | 71 | 115 | 126 | 99 | 170 | 14 | 96 | 135 | 1538 |
| Date of adjournment | Jan. 25 1839 | Jan. 17 1840 | Aug. 1 1840 | Jan. 15 1841 | Feb. 18 1842 | Feb. 17 1843 | Feb. 16 1844 | ..... | June 11 1845 | Jan. 19 1846 | |
| Length of session (days) | 54 | 54 | 17 | 54 | 54 | 52 | 52 | ..... | 37 | 49 | †44 |

* The Journals of the House and Council for the extra session of 1844 seem not to have been printed and the originals could not be found in the office of the Secretary of State.

†Average.

# TABLE II.

## DATA RELATIVE TO STATE LEGISLATION IN IOWA.

## 1846-1858.

| Session. | 1st G. A. | 1st G.A. Ex. | 2d G. A. | 3d G. A. | 4th G. A. | 5th G. A. | 5th Ex. G. A. | 6th G. A. | Totals |
|---|---|---|---|---|---|---|---|---|---|
| Date convened | Nov. 30 1846 | Jan. 3 1848 | Dec. 4 1848 | Dec. 2 1850 | Dec. 6 1852 | Dec. 4 1854 | July 2 1856 | Dec. 1 1856 | |
| Bills introduced in House | 144 | 72 | 177 | 206 | 225 | 184 | 65 | 357 | 1430 |
| Bills introduced in Senate | 116 | 51 | 117 | 107 | 133 | 186 | 33 | 253 | 996 |
| Total introduced | 260 | 123 | 294 | 313 | 358 | 360 | 98 | 610 | 2426 |
| Proportion House Bills (%) | 56 | 59 | 61 | 66 | 63 | 50 | 67 | 59 | 59 |
| Proportion Senate Bills (%) | 44 | 41 | 39 | 34 | 37 | 50 | 33 | 41 | 41 |
| Bills passed both Houses | 125 | 85 | 135 | 104 | 115 | 171 | 51 | 267 | 1053 |
| Bills vetoed by Governor | ..... | 1 | ..... | 5 | 3 | 2 | 1 | 7 | 19 |
| Laws enacted | 125 | 84 | 135 | *99 | 112 | 169 | 50 | 260 | 1034 |
| Ratio of Laws to Bills | 48 | 69 | 45 | 31 | 31 | 45 | 51 | 42 | 42 |
| Joint Resolutions | 23 | 25 | 40 | 36 | 19 | 39 | 9 | 24 | 185 |
| Memorials | 1 | 3 | 8 | 6 | 3 | 8 | 3 | 4 | 36 |
| Bulk in pages | 204 | 102 | 204 | †733 | 219 | 299 | 108 | 467 | 2336 |
| Date of adjournment | Jan. 3 1847 | Jan. 25 1848 | Jan. 15 1849 | Feb. 5 1851 | Jan. 24 1853 | Jan. 26 1855 | July 16 1856 | Jan. 29 1857 | |
| Length of session (days) | 34 | 22 | 42 | 65 | 49 | 53 | 14 | 59 | †42 |

*Code of 1851 was introduced and passed as one bill. It contains 209 chapters having 469 pages.

†Average.

## III.

The vital prerequisite in such an investigation as is essayed here, is, of course, the principle or method of classification whereby we indicate the purport of laws. Our schedule must serve both as base line and as transit by which we fix and measure the nature and bearing of legislative enactments.

It is in the formulation of such a schedule that the investigator receives his first important lesson. If he goes about the matter earnestly and resolutely, banishing preconceived notions from his mind, seeks honestly to secure an accurate, impartial and consistent exhibit of the laws, he first becomes oppressed with the almost interminable difficulties in the way of hasty conclusions. He will realize forthwith that such sentiments and opinions as that quoted in the opening sentence of this essay are almost certain to be not merely extremely ill-considered and superficial observations, as a rule, but in the form in which they are usually expressed such assertions are almost, if not quite, non-demonstrable. For even where the weight of presumption inclines in general respects in their favor specific verification is impossible; for partisan declarations and popular opinions in such complex matters are nearly always so indefinite, variable and delphic, and withal inconsistent, that they cannot be either wholly affirmed or completely refuted.

Examine, for instance, the delphic utterance to which reference is made. What did the speaker mean, what can one mean by asserting that our legislatures are "chiefly concerned with the rights of property and the privileges and profits of corporations as against the rights of man and of labor?" Are not laws of property at one and the same time laws of man—essential as guarantees of life, liberty and the pursuit of happiness alike for the laborer and for the property holder? The laws that insure a man his wages, that give him a prior lien to insure their receipt, affect and guarantee the laborer's rights of property no less than his rights of

labor. Our law that we have long had on our statute books exempting a man's homestead from execution for his debts affects property and labor or man equally. On one side man, or if you please the laborer, is protected from the consequences of misfortune, bad judgment and alack too often his own rascality; while at the same time another man—who is just as likely to be and usually is a laborer also, as well as a creditor and capitalist, is deprived of his common law right to regain property loaned to his fellow laborer which represents the fruits of the creditor's toil and thrift and saving in years gone by. Take the great mass of legislative regulations affecting business corporations, determining their method of organization, their privileges, powers and conduct, are they not as important to labor as to property owners? Laborers are wage earners in their employ; they put their earnings in the custody of their officials, in bank deposits, in policies of insurance, in investments in their stocks and securities. In short the rights of property are the rights of man and of labor. No rights whatsoever can exist disassociated from man and his larger self, so to speak, the State. The contrary notion is at once a legal impossibility and a logical absurdity.

The truth underlying such sweeping and fallacious assertions as that quoted, is, that those uttering them regard some of the laws and their administration or certain social or economic conditions with disfavor, and they entertain sundry desires and views as to reforms and are anxious to promote their adoption, and greater or less modification in law and in public administration is essential and imperative in their estimation. Often such assertions grow out of the dissatisfaction and dread that result from the frequency of gross perversions, in legislative halls where the representatives of corporate business enterprises are omnipresent, aggressive and persistent, and too often their unscrupulous agents exercise a pernicious influence in seeking legislative favors or in preventing wholesome legislation adverse to the pecuniary

interests of such undertakings, while the interests of the public suffer from inattention and indifference or from clashing views and fruitless attempts at reform.

With the grounds for such criticisms and proposals the present writer is not now concerned although he would not have it inferred that he considers the body of existing laws sufficient and satisfactory or their administration all that may be desired. His immediate concern is the analysis of Iowa's statutory enactments in such wise as to make clear their nature and the lines of their progression.

In such an analysis as is contemplated several objectives may be kept in view although, as we shall see, their attainment is not easy. First and in general, if the analysis and compilation is effective we ought to be able to realize clearly the relative growths of what jurists and codifiers designate as Private and Public laws—that is the growth and character on the one hand of those rules that relate exclusively to the rights and duties of individuals as such, the enforcement of which depends chiefly on individual election or volition, and on the other hand of those regulations and statutes that establish the agencies and institutions of government, outline their province and functions, determine their relations to the citizens and the relations of citizens to government, that define crimes, and create and control those artificial creatures of the State known as corporations and altogether prescribe the procedure whereby all rights and obligations whether private or public are enforced.* This exposition, if successful, should also enable us to trace the growth of paternalistic and of socialistic legislation as distinct from what may be called individualistic legislation. Coincident with these results the schedule should make apparent the growth and the drift in development of Administrative

*The reader with an acute logical faculty may urge and with propriety insist that all law is public law. Private law the Austinian may well say is a misnomer. All rules of conduct that have the force and effect of law in these days at least are declared and their effect invariably announced as well as enforced by public tribunals and officials or by the sovereign lawmaking body, the legislature. The classification followed, however, is serviceable and consistent and "common."

law—that body of regulations instituting and governing the various departments, institutions and agencies, whereby the immense and constantly accumulating mass of governmental work is accomplished. Here again we shall find that laws are but the indices of social evolution. In their growth we may simultaneously trace the growth of social or economic conditions that produced the agitation and public opinion that insisted upon the need for governmental interference, regulation and control in certain lines of industry and public care or protection of certain classes or interests in society.

These several results or objectives could unquestionably be attained in the most satisfactory fashion if each were sought under separate schedules especially designed for each class of laws. But the physical task that such an undertaking entails is rather formidable and forbidding and I have contented myself here with but one scheme of classification. The plan of the schedule used is briefly as follows:

The index sign by which acts are classified is the title. If this does not disclose the general purport of the measure, then the contents are scrutinized. Acts often contain various classes of provisions that belong clearly under various distinct titles or heads but which under the scheme followed are ignored. An act establishing a department or institution of government may contain an appropriation or various administrative regulations, but the latter could not be considered except as necessarily implied in the entry made to record the title or general purport of the act.

Laws are regarded as in one or the other of two grand divisions, as lying within either (I) Private Law or (II) Public Law. In assigning particular acts or statutes I have followed Professor Holland's lucid analyses and luminous definitions and in a large degree I have taken his subdivisions.* In the distracting and irksome work of practical classification I have made constant use of Professor Stimson's

*See The Elements of Jurisprudence by T. E. Holland, (9th ed.) 1900, Chapters IX to XVI inclusive, but especially the first and last.

schedules (adopting them almost bodily for the most part in the first general division) as set out in his monumental volumes containing his analysis and classification of our American Statute Law relating to property, persons and corporations.*

Private laws are those first presented. As the individual, his life and welfare, constitutes the *raison d'etre* of the State or of government, gives rise to and comprehends the one great object of corporate agencies or institutions and processes, this order is at once chronological and logical. Private law is presented under two subdivisions—1, Normal law and 2, Abnormal; by the former is designated all that law which relates to normal persons as such; while by the latter is included that body of rules affecting the rights and obligations of juristic "persons" that may be artificial legal concepts or real persons under disability, examples of the two being debtor and creditor and infants or insane.†

Under Normal are classed laws affecting such matters as real property succession, administration, personal property and contracts, and under the second title, Abnormal, are assigned: 1—Contractual relations such as those of debtor and creditor, principal and surety, principal and agent and partnerships, and, 2—Natural relations such as of persons, marriage, divorce, husband and wife, infants and insane. These groups give us somewhat roughly what is often classified as the *law of things* and the *law of persons*. I have varied materially, however, from the authoritative classification here patterned after, in assigning that great body of "Adjective" law, namely, the law prescribing the procedure and processes whereby private persons maintain their "Sub-

*See *American Statute Law*—Persons and Property, by F. J. Stimson, 1886, Vol. II, Corporations, 1892. See especially Tables of Contents for outlines of schedules.

†See Holland's Elements, pp. 133-135. The term "Abnormal" while appropriate and perfectly clear in Professor Holland's exposition is open to the objection that it connotes or suggests that the law designated is in some way "unnatural," "extraordinary," "exceptional" and such like implications. These latter are far from his thought and yet it is likely the average reader first so conceives a law that is labeled "Abnormal."

stantive" rights or secure reparation when they suffer injury and deprivation. Instead of placing such laws under Private Law, I have for reasons which will appear later, classified such acts under the subdivision of public law pertaining to the departments of government.

Under Public Law is classed, of course, all the great mass of rules not included under Private Law. First come laws relating to incorporations; second follow those respecting crimes; and third the laws affecting the organization and conduct of government. The central and dominant thought underlying this division of law is the direct interest of society, of the body politic, of each and every citizen not individually but generally, because of his organic relations with his fellows in his community and state, in the due observance of the rights and obligations here called public and in the due control either immediately or ultimately of all processes and agencies whereby all rights and obligations whatsoever are enforced.

The reasons for so classing laws affecting Incorporations —the creatures of the State—and those defining crimes are obvious. In dealing with laws affecting government, however, I have run athwart the classifications of Professors Holland and Stimson; for herein I include all that body of rules prescribing the procedure of courts and litigants in the maintenance or reparation of rights or in punishing offenders against the criminal laws. These rules, while they comprehend a large amount of adjective law that depends upon the election of private parties whether it shall be invoked or not, are first prescribed by the State or law-making power, whether acting through its supreme legislature or its judiciary and public officials, whether constable, sheriff, justice or jurors summoned by due process executed by agents of the corporate powers in society. There are many perplexities in pursuing this plan but perhaps no less than under the one referred to. The subtitles of the divisions on government, contain the following: 1—Citizen's

Political Status and Civil Rights*; 2—Inauguration and Jurisdiction in which such matters as general election laws, terms of office, boundaries and jurisdiction, publication of laws and their effect are included; 3—Organs or Departments of Government, and hereunder are grouped the great bulk of the laws relating to the organization or constitution of the legislature, executive (State and local) and the judiciary (superior and inferior together with the acts affecting their procedure), the militia, highways, registration and statistics, general police and the furtherance of the general welfare in material, intellectual and moral matters; and maintenance under which revenue and taxation and public accounting come. Finally, there is a miscellany in which legalizing acts and special grants are classified.

The legislation of the first twenty years in the several subdivisions in which it is classed, is grouped under two general heads: 1—Permanent and general acts; and 2—Temporary, special, local and private acts. In the first two periods considered, the latter includes only the local and private acts. Temporary acts, such as appropriations for a definite fiscal period are grouped with the general acts as they relate chiefly to general public purposes and not local. This classification, however, is defective. The general and permanent acts should comprehend only the acts continuously in force until formally repealed or modified; and in the classification of the laws passed after 1858 this separation will be made.

One is seriously perplexed frequently to determine the proper disposition of a law. For instance is the attorney general or county attorney, likewise the sheriff, clerk and constable, to be regarded as an executive or judicial officer? Under either they could be classified with propriety. Here I have classed them as officers of the courts. One's greatest

*The great array of ordinary civil rights usually thought of are, of course, to be found in the bills of rights contained in the constitution, but constitutional provisions are not considered at all in this essay.

difficulty, however, comes where acts relate to business corporations and to the promotion of the general welfare and in this particular, especially, are the exhibits of the schedule followed inadequate. Thus an act or a chapter in a code provides for the rights or powers of a banking corporation and at the same time it provides for the supervision of such institutions by a State examiner. The latter provision is obviously for the promotion of the general welfare, yet under the plan here pursued, the act is assigned wholly to the division in which laws relating to corporations are shown. The long and the short of the matter is that in classifying great numbers of acts one must be more or less arbitrary in their disposition. Unfortunately as different persons are concerned with or interested in different phases of laws, no two would coincide in their arbitrary assignments and thus each can find grounds for divergent opinion and criticism.

IV.

One is tempted to take up and discuss in greater or less detail the peculiarities and virtues of particular laws, but our space prevents any considerable attention to individual acts; and in what follows we shall deal almost entirely with the character and quantity of classes of legislation and with the most conspicuous features and tendencies of the laws enacted and of the manner of making laws prior to 1858.

The laws enacted during the first legislative session in 1838-39 consisted of 87 general acts and of 53 local and private acts. Of this number eight related to private law, two dealing with the law of succession to property, one with contracts and one each with the subjects, debtor and creditor, principal and agent, partnership, marriage and the rights of infants. Thirty-two acts related to business incorporations, of which three were general and 29 special or local. Among the latter number six acts gave private parties the right to erect and maintain dams, 12 gave ferry franchises, two incorporated plank road or turnpike companies; four acts granted manufacturing and commercial

companies the right to do business. Three educational institutions were incorporated. The great bulk of the acts pertains to the constitution and administration of government; 52 general acts and 21 local acts relate to the organization of the general offices or departments, the legislative, executive and judicial branches, to the public domain, highways, the militia; 18 general acts deal with matters of police and the material welfare; one with schools; four with questions of revenue and taxation; and three are miscellaneous acts. In bulk the acts relating to the organization of the courts make the largest showing, 78 pages alone being required for the three acts providing for the courts and the costs of adjudication. The longest single act relates to wills and administration (47 pages with 136 sections); the next deals with crimes (42 pages with 109 sections).

Glancing down through the various classes of laws exhibited in the schedule the noteworthy features of the legislation during the territorial and State periods are briefly:

The total acts dealing with private law reached 35 during the territorial period and 26 under the constitution of 1846; of these 13 related in each period to real property; and six likewise to succession and administration. During the territorial days there were eight general acts dealing with marriage and divorce. One of the special industries, so to speak, of the legislature prior to 1858, was the incorporation of business and other companies by special acts. The territorial legislature passed 42 acts relating to the creation and maintenance of dams, 44 acts respecting ferries. There were eight insurance companies organized; 18 commercial and mercantile companies; 36 academies, lyceums, colleges and "universities," and seven religious organizations were given corporate powers and privileges. The total number relating to incorporations reached 175, of which 10 were general laws and the remainder local or special acts. During the first State period the grand total reached only 80—13 being general

and 67 local statutes. In the second period the majority, as in the first period, relates to dams and ferries. In the prominence of these subjects we may realize the importance of mills to the pioneer citizens and the primitive character of modes of locomotion in the cross country travel.

The most noteworthy fact in connection with the laws affecting corporations passed prior to 1858, is the absence of statutes dealing with financial institutions, such as banks and investment and insurance companies. The business of insurance in those days was still in its infancy and the eight territorial acts referred to above relate entirely to the incorporation or business of particular companies. The business of insurance itself had not attained such a volume or importance as seriously to involve the welfare of any considerable number of people, and there was no general effective popular demand for State regulation until 1856 when the first comprehensive act was passed. With regard to banks on the other hand, Iowa, during the two periods considered, stood conspicuous among the states as a commonwealth without banks with note-issuing powers. The old Miner's bank of Dubuque, the only bank authorized during the territory, had been chartered by the legislature of Wisconsin in 1836, but its career was not one of success and the widespread disasters and demoralization in banking and business following the crisis of 1837 produced a pronounced popular aversion to bank-note issues among the people of Iowa. This antipathy culminated in the absolute prohibition of banks of note-issue in the constitution of 1846. Hence the remarkable absence of laws affecting banks from Iowa's statute books prior to 1858. It was the general dissatisfaction resulting from the lack of adequate banking facilities under the constitution of 1846 that was a potent factor among the causes bringing about the revision of 1857.

There were but ten acts passed before 1846 defining crimes and offenses and providing punishment, and only fifteen were enacted under the State constitution of 1846.

Such acts were passed in five separate sessions during the territory, while all those passed during the first State period were included in the report of the code commission and enacted at the time that code was adopted in 1850-1851. The latter it is to be noted were practically reenactments of previously existing territorial laws defining crimes and imposing punishments.

It is apparent that the great bulk of the lawmaking prior to 1858 related not to property nor to private law nor to the rights and privileges of corporations, but to Government—its establishment, its province and functions, its administration and maintenance. During the territorial government 721 acts out of the 941, or 76.6 per cent., related to government, and during the first years of the State, 1111 out of the 1232, or 90.9 per cent., referred to governmental matters. Or, to put it differently, only 3.7 per cent. of the territorial statutes enacted dealt with private law, but one per cent. with crime and but 18.6 per cent. with the laws affecting business corporations; and in the State period the percentage was less for private laws (2.1 per cent.) and slightly more for crimes (1.2 per cent) while there was a sharp falling off in the proportion dealing with incorporations, the total number reaching only 80 or 6.4 per cent. of all. Of the total directly relating to corporations, 13 were general and 67 were special or local.

Examining the details we find that the majority of the acts affecting the organization of government relates to local government and to the establishment and procedure of courts. Thus under the territorial government there were 10 general laws defining the work of State offices, and 23 general laws and 111 local acts prescribing the work of county and other local administrative offices. Under the State government the proportion of general laws was somewhat changed. There were 25 affecting State offices and 27 local executive offices. The local acts, however, greatly increased, reaching 280. The organization of the courts called for 45 general

acts and 15 local statutes prior to 1846, and 42 general and 55 local measures between 1846 and 1858; while in the matter of judicial procedure there were enacted during the territory 12 acts prescribing general rules, 34 dealing with civil processes and 14 with criminal procedure, and in the State period there were 32 statutes determining general rules of practice, 49 declaring civil and 58 criminal procedures.

In the first period there were passed eight general laws and 175 local acts dealing with highways and roads, and in the second period there were three general laws and 139 local acts.

The number of laws dealing with matters of police and the general welfare do not constitute a large proportion. Out of the total number enacted prior to 1846 only 44, or 4.6 per cent., related to police regulations, charities and corrections, general trade definitions, the regulation of trades and professions, and the promotion of the general welfare. The amount and the percentage increased to 80 general acts and eight local laws, or 7.1 per cent. between 1846 and 1858. The great majority relates to public health, order and safety, to charities and corrections and to general trade definitions. In the second period the acts dealing with charities and corrections number 22 as against nine in the period of the territory. The care of the blind, the deaf and the insane became matters of public concern about 1850 and we perceive the effect of public agitation in the statute books.

A similar and more pronounced increase took place in the amount of legislation for promoting the intellectual and moral welfare of the people. Under the territorial government but four acts were passed relating to schools and libraries; while under the State government 37 general laws and six local acts were passed. These were nearly equally divided between the State and local schools. In considering these figures it should not be forgotten that acts relating to fiscal matters, such as funds and appropriations allotted to educational institutions, appear under another title, viz.:

Maintenance. Laws affecting education constituted but 0.4 per cent. in the first period and but 3.4 per cent. between 1846 and 1858.

The laws passed dealing with matters of finance, with the custody of funds, the assessment and collection of taxes and with public accounting call for little comment. They consisted of only 44 acts during the territorial period and 113 in the second period. The largest number related to appropriations; and next in order those providing for the care of school funds. Such acts constituted 4.6 per cent. and 9.9 per cent. of all acts passed in the respective periods considered.

One of the most interesting and instructive subdivisions of the schedule is that wherein are shown various and sundry acts, such as those granting legal relief, giving parties special authority to do various acts, changing persons' names, granting divorces and legalization. The total number of such statutes in the first period was seven general laws prescribing procedure in such matters and 112 local or private acts, and in the second, two general acts and 59 private enactments. At the outset these acts dealt with each case separately, but they increased so much in number and in their perplexities that the legislature began rather early to bunch them in omnibus bills. There was of course both economy and politics in this development. When such matters are "pooled" the chances of passage are greatly increased while individual bills would encounter wreck.

The totals given briefly in the foregoing are compactly presented in Table III, in which the number of the various classes of laws are exhibited. The items or the detailed enumeration will be found in the schedule.

## TABLE III.

CLASSES OF LAWS PASSED IN IOWA PRIOR TO 1858.

| Classes of Laws | 1838-1846 | | | | 1846-1856 | | | |
|---|---|---|---|---|---|---|---|---|
| | Gen'l | Special | Total | Per Cent. | Gen'l | Special | Total | Per Cent. |
| Private Laws | 35 | ..... | 35 | 3.7 | 26 | ..... | 26 | 2.1 |
| Public Laws | 306 | 600 | 906 | 96.3 | 558 | 648 | 1206 | 97.9 |
| 1. Incorporations | 10 | 165 | 175 | 18.6 | 13 | 67 | 80 | 6.4 |
| 2. Crimes and offenses | 10 | ..... | 10 | 1.. | 15 | ..... | 15 | 1.2 |
| 3. Government | 286 | 435 | 721 | 76.6 | 530 | 581 | 1111 | 90.9 |
| a. Organization | 199 | 311 | 510 | 54.1 | 319 | 488 | 807 | 65.3 |
| b. Police and material welfare | 44 | ..... | 44 | 4.6 | 80 | 8 | 88 | 7.1 |
| c. Intellectual and moral welfare | 4 | ..... | 4 | 0.4 | 37 | 6 | 43 | 3.4 |
| d. Maintenance | 32 | 12 | 44 | 4.6 | 93 | 20 | 113 | 9.9 |
| e. Miscellaneous | 7 | 112 | 119 | 12.6 | 2 | 59 | 61 | 4.9 |
| Grand Total | 341 | 600 | 941 | ..... | 584 | 648 | 1232 | ..... |

[The schedule of laws which should follow here will be printed along with the schedule showing the laws passed after 1858 that will appear in a subsequent issue of the Annals.]

## V.

A general view of Iowa's territorial and early State legislation discloses several facts that stand out prominently; and before closing we may well consider them briefly. They will become all the more conspicuous and significant when we shall have reviewed the legislation subsequent to the adoption of the constitution of 1857, and can take the long view of the entire range and sweep of our legislative enactments.

The fact that will first attract the lawyer perhaps is the effect of the early legislation on the common law. As regards the primordial rights and obligations of man, his rights of personal liberty, of property and of contract—and the definitions affecting crimes there was but little addition to and not much modification thereof during the first twenty years of the State's legislative history. The pioneers came into Iowa from Southern, Middle and New England states. They brought with them an inheritance of English common law and a stock of political ideas and institutions with which they had been familiar in their ancestral states. The early lawmakers adopted almost *en bloc* the statutes either of Wisconsin and Michigan (whence organically we descend as a political organization), or of other states from which they hailed. These laws were more or less of a kind, at least they were all built up about a common stock;* and

*The history of the beginnings of the statute laws of Iowa is a subject of profound interest; but so far it constitutes practically an undiscovered country. A few excursions have been made within its borders; but no extensive or detailed accounts exist of the ancestry or pedigrees of the important statutes first adopted. See T. L. Cole's "Historical Bibliography of the Statute Law of Iowa" in *Law Bulletin* of the State University of Iowa No. 2. In 1892 Chancellor Emlin McClain, now of Iowa's Supreme Court, in a lecture entitled "Introduction of the Common Law into Iowa," outlined the development of our law governing the ordinary rights of citizens prior to the beginning of Iowa's existence as a separate territory—published in *Iowa Historical Lectures*. Professor B. F. Shambaugh has given us much respecting the beginnings of our constitutional enactments and forms of local government. See his Introductory Notes to sections of his "Documentary Materials," vols. I and II.

As regards the character of the early laws and the manner of their making, accounts are as yet fragmentary. Any one who cares to seek may find some interesting and instructive data in Prof. T. S. Parvin's Memorabilia, especially his account of the Administration of Governor Lucas, ANNALS OF IOWA, 3rd series, vol. II, 409-437; in Dr. Wm. Salter's writings, such as his "Life of Governor Grimes," and in particu-

while a few additions or rather modifications were made in the laws affecting private persons in the next decade, they suffered no material change until they received the thorough overhauling of Judge Mason and his colleagues of the code commission appointed in 1848, whose codification was accepted and adopted in 1851. But the work of Judge Mason was not that of the lawmaker, he did not add to or modify the statutes. His work was simply the work of the codifier. He assembled under rational categories the miscellaneous provisions of acts scattered here and there in masses of temporary and local acts. He greatly reduced the bulk of the laws by applying the knife vigorously to the luxuriant verbiage of the earlier statutes and brought the parts together in a compilation that legal experts pronounce a work of literary as well as legal art.* But excepting certain laws affecting trade definitions and beneficial regulations and governmental changes, which we shall consider, we may almost say that the legislature neither added to nor materially altered the ordinary laws affecting persons and property in the legislative enactments prior to 1858.

Another fact that must needs strike the eye as one courses through the early statute books is what we may call the "particularistic" exercise of legislative power. Our theory of popular sovereignty and of the predominance of the lawmaking body in the State presumes or implies necessarily the possession of superior wisdom and ability in the

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lar his address in "Commemoration of the Meeting of the First Legislative Assembly" at Burlington, November 11, 1900, reprinted in the ANNALS, vol. IV, 614-624; in Professor Jesse Macy's "Institutional Beginnings of a Western State," Johns Hopkins University Studies in History (2nd series), also reprinted in ANNALS, vol. III, 321-350; and in Judge Emlin McClain's article on "Charles Mason—Iowa's First Jurist," ANNALS, vol. IV, 595-609.

The writer has previously dealt with some phases of our legal and institutional genealogy; see the article on "The Transfusion of Political Ideas and Institutions," already cited herein and in particular "Iowa's Treasury Deficit in the Light of the Constitutional Debates," ANNALS, vol. III, 631-640, "The Regulation of Trade and Morals by Iowa Town Councils Prior to 1858," Ibid, vol. V, 126-134, "Chapters in Iowa's Financial History," Ibid, 352-373 and 425-446, in "Publicity in Local Finance," Ibid, vol. VI, 123-137 and "Transplanting Iowa s Laws to Oregon," Ibid, 455-463.

*See Judge McClain's article on Judge Mason already cited.

people's representatives. The theory assumes that the lawmakers are not only competent to do all things and to supervise all things, but that they can do so and in the process of lawmaking and in the regulation of the affairs of their citizens they will regard all matters and do all things with an eye single to the public good—the greatest good to the greatest number—and especially will they resolutely exclude personal feeling, interest or prejudice from their deliberations and actions. This in general was the assumption underlying much of the territorial and early State legislation in Iowa. The power of the legislature extended to "all rightful subjects of legislation," and the lawmakers undertook to deal not only generally but individually with all manner of subjects, persons and interests. Not only was action taken upon the common and State-wide needs but laws benefiting or adversely affecting particular localities and interests and individuals were freely passed. The incorporation of particular business companies, of towns and counties, of churches and colleges were matters separately and individually dealt with. This particularistic legislation reached its extreme in the granting of divorces and in the changing of the names of private parties and in divers and sundry acts at each session, legalizing innumerable omissions and commissions, and in granting authority to particular individuals to do an endless variety of things.

As suggested, if lawmakers were philosophers and savants they might compass such a mass of complex and conflicting matters with efficiency in their dispatch and with equity in their decisions. But human nature is too weak. The conditions under which a legislature must do its work make impossible careful and impartial consideration of a vast miscellany of local or private interests that press tumultuously upon the members, if there is afforded any opportunity for legislative action thereon. In the first place their consideration interferes constantly and seriously with the primary and practically the chief function of a lawmaking body. A

legislature should concern itself almost entirely with determining the need for general rules of action and in deliberating upon the nature of their provisions defining the rights and duties of citizens, prescribing the province and powers of governmental agencies—and not with the innumerable and endlessly varying problems of practical administration. The intrusion of the latter into legislative proceedings confuses and darkens counsel and invariably clogs the transaction of the legislature's most important work with results that usually issue in more or less perversion, if not corruption. Even now-a-days, when the legislature is narrowly restricted by the bars of a constitutional prohibition against special and local legislation, we know how aggressive and persistent is the invasion of legislative precincts by private and corporate interests seeking governmental benefits in the way of favorable legislation and largess. If now and then we are disturbed by the gross intrusion of the lobby within the halls of the people's General Assembly, what must have been the feelings of the judicious prior to 1858 as they witnessed the clash of city cliques and county clans, of rival business corporations and special interests in hotel lobbies and committee rooms as they severally struggled for legislative consideration. But if such matter-of-fact affairs were disconcerting what sort of a distraction must have been the business of granting divorces! What varied scenes must have been enacted as angry couples faced each other in crowded committee rooms and told their tales of woe, one seeking, the other striving to prevent, the sundering of their matrimonial bonds! What floods of sentiment must have inundated the premises as attorneys appealed to the hearts of the senators and representatives and the sympathetic members under the glow of tender feelings and (with perhaps an eye to the gallery) attacked obdurate members who opposed such petitions! Those who have witnessed the gush of sentiment in recent years in appeals for pardons before legislative committees and the utter rout of reason and common sense in the

debates can easily imagine the varieties in diversion that interfered with the serious work of lawmaking in the first stages of the State's history. In 1843 the evils of granting divorces became so conspicuous that the House of Representatives by resolution condemned the practice, but the "pressure" on the members was too strong and they continued granting them. Governor Chambers has to his credit a vigorous message in which he vetoed an omnibus bill in which 19 discordant families were granted dissolution by legislative decree. But his protest did not avail much until years afterwards when the practice was stopped and the consideration of such matters committed exclusively to judicial tribunals. Our laws and our practical affairs would be still vastly improved if a multitude of matters of like character were thus committed to the courts or to commissions which would act in a judicial manner free from the intervention of partizan bias and personal or corporate interests.

But of the many phases of modern legislation none perhaps is of greater interest and moment to the public than the relative growths of what are commonly called individualistic, paternalistic and socialistic legislation. Society or the State now-a-days employing the enginery of government plays a prominent and ever-increasing part in the life of man. The intrusion of the corporate agencies into his private life and into the common life of the people has become the most noteworthy feature of modern political development. Not a few regard this increase of State interference in man's affairs with alarm; many contemplate it with doubt and much anxiety, while many, perhaps the majority, rejoice in this augmentation of governmental power and in the extension of the State's supervision as a necessary and beneficent development in our collective life. The course of legislation in Iowa in these respects is most interesting and instructive because it has taken place under what we may in somewhat paradoxical language describe as

extraordinarily normal conditions. Here in a region wonderfully fertile, and favorable alike for human habitation and for industry, with a population made up of vigorous pioneers from Southern, Middle and New England states with which later successfully fused sturdy industrious foreign elements, with agriculture in the predominance, yet with commerce, mining and manufactures crowding lustily to the fore, with no immense cities with their evils and problems preponderating in her life, politics and industry (yet with nearly half her population to-day living in cities and towns), with her government, State and local, fairly efficient and economical and for the most part free from the grosser forms of corruption—here in America's Mesopotamia for three-quarters of a century laws have been in the making. The attitude of such a people, under such conditions, towards governmental regulation and control in man's affairs as shown in their laws must needs be at once typical and instructive.

Here again if we would avoid confusion, definitions of terms are expedient, although lack of space prevents any adequate discussion that will anticipate the many erroneous assumptions and conflicting inferences that the terms individualistic, paternalistic and socialistic suggest.

In this essay "individualistic" legislation implies those laws, the aim of which is primarily to define and to guarantee rights and duties as regards personal liberty, property, its inheritance, and contracts, and in consequence to insure citizens against external invasion and internal violence, and against imposition and intimidation together with means for enforcing reparation in damages for injuries done. The general rule or principle sought is the utmost freedom of action for all alike and in the attainment of this condition it is deemed best *laissez faire laissez passer* so long as there results no conflict of interests; and should the latter contingency arise, the interference of the State should go no farther than to insure the rule of equal freedom. The assumption underlying individualistic legislation is, that

individuals know best what they want and need, and that they can and will best secure what they need if they are assured of their fundamental rights of life, liberty and property, and the sanctity of contracts; and when such guarantees are assured, society's interests are thus most effectually promoted. By enforcing this principle we permit free play for the maintenance of what the late Herbert Spencer insisted is the great law of social progress namely the rule of conduct and consequence in a condition of equal freedom. By "paternalistic" legislation is meant that species of State regulation which coerces the individual to do that which the legislature or the dominant majority in society decides is for his good, just as the parent in the exercise of parental authority compels the child for its own sake to observe a certain course of action whether the child would or no. Paternalism collides squarely with man's time-honored prerogative of "making a fool of himself so long as he does not run amuck" in his community. The term "socialistic" signifies laws whose original purpose is to conserve, sometimes in negative fashion but usually in a positive manner, the general or collective interests of citizens by the State's interference and assumption of control and, if needful, the actual conduct of affairs where the free play of individual interests and self-seeking would result adversely to the common interests.

In popular debate there is little discrimination in the use of these terms, and the same is to be observed of much of our academic discussion. This arises partly from proverbial laxity in the use of terms and partly from the inherent difficulties in the way of precise differentiation of the three classes of laws. In politics, laws and government, we can not always present their phenomena in sharply defined categories. We can not set them out, arrange, classify and label them as easily as does the botanist or zoologist the specimens in his museum. In the hurly burly of business and politics, in the practical administration of man's affairs

through the agencies of government, the phenomena of law fuse and confuse, class with class; and seldom is the public heedful of the social significance of the changes resulting. Individualism implies not only negative but positive action on the part of the State in order fully to maintain man's primordial rights. The State is bound not simply to protect him from foreign foes and highwaymen at home but from fraud and imposture. This necessity induces a vast augmentation in governmental functions in the exercise of the "police" power. But this expansion of the State's police function inevitably pushes legislation up to the borders of paternalism and of socialism, and popular logic, little discriminating, compels lawmakers to enter upon regulations and policies that come within the bounds of either class. Thus it is common to protect the public against incompetence and fraud. For instance we require lawyers and physicians to attain a certain modicum of education before they can practice. Those unlicensed we prohibit practicing and thus by short, swift steps our lawmakers, originally staunch individualists for the most part, proceeded in their effort to secure the public against fraud to the ultima of paternalism and deny us the sweet privilege of employing shysters, pettifoggers and quacks to our heart's content and purse's limit. Our common and State schools we inaugurated as socialistic undertakings—because it was assumed that private schools would not afford all the educational facilities that many deemed needful; but while private citizens are not denied the right to educate their children where and how they please, we are in effect with no little rapidity entering upon a career of pure paternalism that is bound at no distant day to develop into the unmitigated communism that Herbert Spencer just fifty years ago prophesied would ensue.* It is clear that private and public interests do not always coincide, and that wisdom suggests vigorous public supervision and regulation if not control and management in numerous

*See his Social Statics, pp. 361-362.

instances, as in the preservation game, forests and land parks, and in the control of highways and common carriers. Laws governing such matters may be regarded as merely the exercise of the police power of the State in the furtherance of the general welfare and thus individualistic or they may with equal propriety be pronounced socialistic. Keeping these considerations in mind let us briefly note the general developments in legislation in Iowa prior to 1858.

As we have already seen, the great preponderance of laws in the pioneer days related to the constitution of offices and departments of government and to their administration. Comparatively few dealt with either private law or with crimes. The major portion of the legislation was therefore Administrative or Regulative; and in the main we may say that either would be classed as strictly individualistic in character. Take for example the establishment and control of roads, the regulation of weights and measures and the definitions of fences. These are merely regulative laws that may be considered as exercises of the police power necessary to insure peaceful industry. Many of the acts were designed primarily as positive protective measures—such as the acts relating to prairie fires, public health, order and local decency.

We find, however, various decided developments in both paternalistic and socialistic legislation in the two periods considered. In the former class may be mentioned the regulation of interest rates, the law exempting homesteads from execution for debts, and various beneficial regulations designed to benefit certain classes such as mechanics' liens and various exemptions affecting taxation. Laws relating to poor relief and care of defectives might be so classed but they can be with equal propriety classed as individualistic acts of legislation, designed for the protection of society from classes whose existence constitutes more or less of a menace to social well-being. The most noteworthy paternalistic law passed before 1858 was the act of 1855 for the suppres-

sion of intemperance. An examination of the charters given various cities in the early periods discloses more or less of paternalistic tendencies with respect to morals and trade.*

In the sense in which the term is used here there were but two notable acts of socialistic legislation during the territorial days, namely, the laws providing for the establishment of the common schools and the act providing for the State library. As I have once before stated, the earliest settlers in Iowa were largely southerners either immediately or remotely. Their theory and practice of government did not go much beyond the "individualistic minimum" of State activity. With them the least government was necessarily the best government. The demand for socialistic legislation became more pronounced after the adoption of the constitution of 1846, because of the influx of great numbers of immigrants from New England, New York and Pennsylvania, who brought with them recollections of public schools, libraries, and greater or less governmental interference in industry, trade and morals for the promotion of the general social welfare. The effect of their views began to be marked about 1850. The establishment of the common schools was aggressively promoted until the radical reorganization urged by Horace Mann went into effect in 1856. It was after 1846 that the movement for a State University, for State Normal schools, for the education of the deaf and the blind at public expense, got under headway and resulted in legislative establishments and appropriations therefor. During the first State period occurred Iowa's chief and somewhat disastrous socialistic experiment in the promotion of Internal Improvements in the attempt to make the Des Moines river a great inland waterway for commerce. Finally in the latter portion of the period occurred the initial efforts with a view to State encouragement of agriculture, that evolved the institution at Ames and the State Agricultural Society

*See the writer's account in "Regulation of Trade and Morals by Iowa Town Councils prior to 1858," already cited.

and the numerous county institutions, with their fairs and institutes and activities for the promotion of agriculture and allied pursuits, that now play a large and growing part not only in the agriculture but in the politics of the State.

These sprouts in paternalistic and socialistic legislation which sprang up in the decade under the constitution of 1846 we shall see grow and spread rapidly and vigorously in the decades following the civil war. We shall find likewise a great increase in the exercise of the State's police power in positive protective measures and in general regulations and definitions of spheres of trade and industrial activity.

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THE NOBLE IOWA HORSE.—The noble horse! The day of his mutilation in Iowa is passed. No longer shall he be made to suffer a thousand deaths while his beauty is being sacrificed upon the altar of commercialism. Both house and senate of the State legislature have passed the bill making the docking of horses in this State a misdemeanor and punishable by a fine of $100. We congratulate Mrs. Irene Rood, the intelligent and tireless representative of the American Humane association. She has haunted committee rooms, labored with members and driven the sordid emissaries of the market-place from every position which they have assumed. The victory which she has won is but another addition to those achieved in the other states of the union. We congratulate the press of Iowa which responded nobly to the support of this measure. We recall but three papers in the State which undertook to belittle the bill. And, lastly, we congratulate the people of Iowa. Again have they demonstrated through their senators and representatives that while thrift, energy and prosperity may be their dominating characteristics, they are nevertheless ready to respond to every demand which shall be made upon them in behalf of the highest types of civilization. They glory in being in the forefront of every good work.—*Des Moines Daily Capital, March 26, 1904.*

# THE IOWA CORALS.

BY T. E. SAVAGE.

"The earth has gathered to her breast again
And yet again, the millions that were born
Of her unnumbered, unremembered tribes."

The corals constitute one of the conspicuous animal groups of ancient as well as modern times. Their beautiful coralla grace every period in which life's records are abundantly preserved. Among the fossils of Iowa few occur in a more perfect state of preservation, and none are possessed of a finer elegance or more delicate beauty than those of her ancient coral forms. At certain horizons coral remains occur in great profusion, and they are widely distributed in many of the strata of the state. Because of the readiness with which the species can be recognized, and on account of the limited range of many of the corals, they furnish to the geologist one of the most satisfactory means of determining the age of the rocks, and of distinguishing the successive geological formations exposed in the state.

Since the greater portion of the rocks which appear at the surface in Iowa belong to the Paleozoic era, all of the fossil corals are old-fashioned forms; types which lived in those far distant ages while yet the continents were small and life was young and the new earth was warmer than it is today. Of course these ancient corals were exclusively marine. Probably, like their modern relatives, they lived at no great depth, in waters that were warm, and free from rapidly accumulating sediments. Fast anchored to the ocean's floor these delicate creatures flourished in the tepid waters of that summer sea, nor ever felt the blighting chill of winter. They grew upon a stony pedestal of their own building and bore aloft a circlet of retractile tentacles by means of which they captured their food. Like other

aquatic animals, they utilized for respiration the oxygen diffused in the water that surrounded them.

Within their watery home these lowly forms found life replete with joy. They never breathed the flower perfumed air, nor felt the gentle wind's caress, nor the soft sunbeam's kiss; but oft the restless waves that hurried back and forth above their beds would pause to fondle them, and, in passing, would leave for them abundant stores of food. As these lowly creatures lived and labored they extracted from the sea water calcium carbonate and with it built ever higher the house on which they grew. This skeleton or corallum is the only portion of the coral with which in the fossil state we have to do.

Some of these ancient corals were simple and independent in their habits of growth. Others lived in colonies which were formed by the incomplete separation of the individuals when increase was effected by cleavage or by budding. The coralla of these colony-forming corals were of various shapes and sizes depending upon the position in which the new buds were produced, and the manner in which the new individuals or corallites continued to grow with respect to one another and to the parent polyp.

In the class Anthozoa, of which the corals are members, there are generally recognized two principal Paleozoic groups, the Tetracoralla and the Hexacoralla. The chief basis of distinction between the fossil members of these two groups is the arrangement of the septa or longitudinally-extending, radiating plates. Between these septa, during the life of the coral, were suspended the folds of the mesenteries which tissue was active in the secretion of the calcareous skeleton.

Among the Tetracoralla the septa in each corallite were disposed in four quadrants in such a manner that the entire number was some multiple of four, and the animal possessed bilateral symmetry. In the members of the Hexacoralla the original septa were usually six in number. As the individ-

uals increased in size, new ones were introduced midway between adjacent septa previously existing in such a manner that the number was always some multiple of six, and the symmetry of the animal was radial. Almost all of the fossil representatives of the Hexacoralla in Iowa belong to the subgroup Tabulata. They are, without exception, compound corals with numerous tabulæ or transverse diaphragms, and but poorly developed septa. The number of septa that were present in each corallite of either of the above groups corresponds with the number of tentacles with which the individual polyp was endowed.

In the rocks of the Ordovician system are preserved the remains of the earliest corals found in the state. In these deposits is encountered the peculiar fossil *Receptaculites oweni* Hall whose coral kinship is uncertain. This form is present in abundance in the rocks of Dubuque and Clayton counties, near the top of the Galena-Trenton stage. In this stage, too, there occurs the closely related species *Ischadites iowensis* Owen. These same rocks, and especially those of the Maquoketa stage in Howard county, contain the remains of *Streptelasma corniculum* Hall, the earliest representative of the true corals known in Iowa. As its specific name implies, this is a simple, horn-shaped form. It belongs to the highly successful family Zaphrentidæ whose members persisted throughout all of the ages of the Paleozoic era.

During a portion of the Silurian period the conditions were much more favorable for the development of coralline life than those of any period that went before. The series of rocks in Iowa which were deposited during this period is known as the Niagara. The beds are almost universally dolomitic, having suffered the change from limestone to dolomite since the sediments were laid down. These resistant ledges weather but slowly. They stand in vertical cliffs and abrupt escarpments bordering all of the larger streams of the area over which the Niagara limestones immediately underlie the drift. (See plate I, figure 1.)



Fig. 1. Ledge of Niagara limestone in Delaware county, showing the cliff-forming tendency of the "Coralline Beds" of the Delaware stage. [Iowa Geological Survey.]



Fig. 2. Exposure of Cedar Valley limestone near Vinton, Iowa. The acervularia davidsoni coral reef appears at the top of the exposure.

PLATE I.

The imbedded coral skeletons which were originally built up of calcium carbonate have usually become silicified; the calcareous material of the framework having been completely replaced by silica. In some cases the coral skeleton has been dissolved out of the stony matrix and the fossils now exist only in the form of moulds, a cavity marking the position of the various portions of the original framework.

Professor Calvin* has shown that the life of this time in Iowa was not uniformly distributed over the sea bottom, but was more or less segregated in colonies. These fortunate areas teemed with a rich and varied population among which, both in number of individuals and the variety of forms, the corals exceeded any other group of animals in that old Niagara sea.

During the Delaware age the Niagara corals attained their maximum development. At this time the Tetracoralla were abundant. Near where now stand the towns of Masonville and Monticello there grew the small, solitary *Paleocyclus peracutus* Lonsdale, and the large robust *Zaphrentis stokesi* Edwards & Haime. With the latter were mingled the delicate coralla of *Streptelasma patula* Rominger (plate II, figure 1), *S. spongaxis* Rominger, and *S. calycula* Hall. Of the cup corals there also flourished here in great abundance *Ptychophyllum expansum* Owen (plate II, figures 3, 4), an undescribed species of the same genus, *Amplexus shumardi* Edwards & Haime, and in lesser numbers the smaller form *Cyathophyllum radicula* Rominger. The colony forming members of this family were even more conspicuous. At this time coralla of *Diphyphyllum multicaule* Hall attained a diameter of several feet. The genus Strombodes was represented by a number of species among which were *Strombodes mamillare* Owen (plate II, figure 8), *S. gigas* Owen, *S. pentagonus* Goldfuss, and *S. pygmacus* Rominger. Here also grew occasional coralla of *Cystophorolites major* Rom., and *C. minor* Rom., and more

*Calvin: Geology of Delaware county, p. 155.

numerous individuals of *Cystiphyllum niagarense* Hall (plate II, figure 6). The curious little four-sided, pyramid-shaped coral *Goniophyllum pyramidale* Hisinger also lived at this time.

If representatives of the Tetracoralla were present in large numbers in the seas of this age, the members of the Hexacoralla flourished in even greater profusion. The honey-comb corals expanded into a number of species among which *Favosites favosus* Goldfuss (plate II, figure 7) was the largest and most abundant. *F. niagarensis* Hall, *F. hispidus* Rominger, and *F. hisingeri* Ed. & H. (plate II, figure 5) were also quite numerous, while *F. alveolaris* Goldfuss and *F. obliquus* Rominger were not rare. The remains of the closely allied species *Alveolites undosus* Miller, *Thecia major* Rom., and *Cladopora laqueata* Rom. were left mingled with those of the above mentioned Favosites. Compound corals differing from Favosites in the fact that the adjacent corallites were united, only at intervals, by hollow connecting processes were *Syringopora verticillata* Goldfuss, *S. tenella* Rominger, *S. fibrata* Rom. (plate II, figure 2) and *S. annulata* Rom. Associated in abundance with the typical corals of this age was the interesting chain-coral *Halysites catenulatus* Linnaeus. In this species the tubular corallites were built in chain-like series and disposed in such a manner as to surround irregular, vacant spaces. Sometimes the colonies were small and the corallites exceedingly tiny and delicate. In other places the coralla of this species attained the remarkable dimensions of several feet, and the individual corallites are many times the diameter of those of the smaller type.

During this time the genus Heliolites was represented by the species *H. interstinctus* Linn., *H. megastoma* McCoy, *H. pyriformis* Hall, and *H. subtubulatus* McCoy. The related species *Plasmopora follis* Edwards & Haime, *Lyellia americana* Ed. & H., and *L. decipiens* Rominger were not less abundant. Among the more distant coral

relatives were present *Cannapora junciformis* Hall, *C. annulata* Nicholson & Hinde, a few species of Stromatoporoids, and the enigmatical fossil *Cerionites dactylioides* Owen.

All of the Niagara corals mentioned above occur in the deposits of the Delaware stage, in the counties of Jones, Dubuque and Delaware. The rocks of this stage are preeminently the coral-bearing beds. As these ledges slowly disintegrated under the influence of the air and sun and showers, the hard, silicified coralla which they contained were frequently left in great numbers, free and entire, among the residual cherts and debris that mantle the tops of the cliffs. Few species of corals are encountered in the rocks of the later stages of the Niagara series, and of these the individuals occur only at very rare intervals.

Toward the close of the Niagara epoch there was an upward movement of that part of the earth's crust which embraced what is now the eastern portion of Iowa. This elevation shifted the shore-line further westward over that area, and produced a change in the conditions of sedimentation. The forms of life that peopled the sea during the Devonian period were the lineal descendants of Niagara types. The family features of the Niagara corals can be recognized in the facies of many of the later Devonian species. Under the influence of changing conditions, then as always, the progress of time was marked by migrations as well as the gradual but constant changes in the structure of the living forms. So profoundly were the corals modified that not a single one of the Niagara species persisted in the Devonian strata of Iowa. Even the genera of the Devonian are mostly new.

If the life in the Niagara sea was segregated in particularly favorable localities, it was widely and quite uniformly distributed over the more shallow portions of the ocean's bottom during the time of deposition of the Devonian sediments. At certain horizons corals grew in such abundance that their remains form well marked reefs of coral limestone.

During the Cedar Valley age in Iowa the members of the group Tetracoralla reached their highest development. Near the base of the deposits of this age corals are the characteristic fossils. In the counties of Buchanan and Johnson there occur large and beautiful coralla of *Phillipsastrea billingsi* Calvin, and the smaller but not less elegant species *Acervularia profunda* Hall (plate III, figure 3). These two species are not excelled in elegance among the fossils the world around. The latter species together with *Cystiphyllum americanum* Ed. & Haime (plate II, figure 6), and an undescribed species of Cyathophyllum are common near the base of the Cedar Valley limestones. Intermingled with coralla of the above were left the remains of *Favosites placenta* Rominger (plate III, figure 7), *Alveolites goldfussi* Billings (plate III, figure 4) and *Cladopora magna* Hall. A few feet above the zone of *Acervularia profunda* the simple coralla of *Aulocophyllum princeps* Hall and the larger species *Cyathophyllum robustum* Hall are abundant in some localities. From fifteen to twenty feet above the base of the Cedar Valley stage, and only a few feet above the zone of *Acervularia profunda*, the *Acervularia davidsoni* coral reef is encountered. The development of the reef is constant at this horizon from Howard county in the north to Muscatine county in the south. It outcrops in practically all of the counties that are touched by the winding channel of the Cedar river. The zone is so conspicuous and the contained coral species are so readily recognized that it makes the correlation of the layers of Devonian rocks in these counties comparatively easy.

Among the corals whose remains were left promiscuously intermingled in this coral reef, large and beautiful coralla of *Acervularia davidsoni* Ed. & Haime (plate III, figure 8) occur in great abundance. Indeed, the remains of the above species predominate in this zone to such an extent that the horizon is referred to in the geological literature of

the state as the *Acervularia davidsoni* coral reef. (See plate I, figure 2.) This reef is well exposed near Iowa City, Shellsburg, Vinton, Independence, Littleton, Waterloo, and at many other points in that portion of the state in which the rocks of Cedar Valley age appear at the surface.

In this zone the simple coralla of *Ptychophyllum versiforme* Hall (plate III, figure 1), *Heliophyllum halli* Ed. & Haime (plate III, figure 2), *Cystiphyllum americanum* Ed. & H. (plate III, figure 6), and *C. conifolle* Hall are numerous. With the above forms there are present of the Hexacoralla, *Favosites alpenensis* Winchell (plate III, figure 9), *F. emmonsi* Rominger, *Cladopora iowensis* Owen, and an undetermined species of *Pachypora*.

In addition to the corals enumerated above, and which are almost universally present at this horizon, there occur in the bed of a small stream near Littleton, in Buchanan county, *Acervularia profunda* Hall, an undescribed species of *Chonophyllum*, two undetermined species of *Favosites*, *Cladopora dichotoma* Hall, *C. palmata* H. & W., and *C. prolifica* Hall. There are also found here two undescribed species of *Syringopora* and several species of *Stromatopora*. This exposure near Littleton is one of the best coral-collecting grounds in the state. The coralla have weathered out, clean and perfect, from the soft shaly material in which they were originally imbedded, and pave the bottom of a small stream for a distance of several rods.

At no great distance from the coral reef there are encountered, in some localities, coralla of *Craspedophyllum strictum* Edwards & Haime, and *Alveolites roemeri* Billings.

In the white limestone near the top of the Cedar Valley stage there occurs a reef composed largely of masses of Stromatoporoids. This coral zone has a greater thickness, and is scarcely less extensive than that of the *Acervularia davidsoni* reef at a lower horizon. It outcrops in the counties of Worth, Mitchell, Cerro Gordo, Floyd, Blackhawk,

Benton, Johnson and others over the Devonian area. The forms whose skeletons make up this bed mostly belong to the group Hydrozoa. They include species of *Idiostroma*, *Actinostroma*, *Stromatoporella* and *Stromatopora*.

During the Lime Creek age, which succeeded the Cedar Valley, that portion of the Paleozoic sea which included what is now Floyd and Cerro Gordo counties supported a rich variety of coral life. Modified descendants of *Acervularia davidsoni* persisted at this time in the species *Acervularia inequalis* Hall & Whitfield. With this type were associated beautiful compound coralla of *Pachyphyllum woodmani* White (plate III, figure 5), and the small solitary species *P. solitarium* Hall & Whitfield, and *Campophyllum nanum* Hall & Whitfield. *Ptychophyllum ellipticum* H. & W., *Cyathophyllum solidum* H. & W., and *Cystiphyllum mundulum* H. & W. were the later Devonian representatives of the species of these genera that flourished during the Cedar Valley age. *Strombodes johannis* H. & W., and *S. multiradiatum* H. & W. also left their remains in the soft shales of the Lime Creek stage together with those of *Alveolites rockfordensis* H. & W., *Aulopora iowensis* H. & W., and *A. saxiradum* H. & W. Among the coralloid Hydrozoa there were present species of *Idiostroma*, *Stromatoporella incrustans* H. & W., *S. solidula* H. & W., and *Parallelopora planulata* H. & W.

Before the close of the Devonian period the corals began to decline and they never again occurred in such variety and abundance in the ancient mediterranean sea whose waters washed the shores of Iowa. In the later portion of the Devonian system there is a long break in the continuity of deposition recorded in the rocks of our state. The Upper Devonian series is represented in Iowa by the rocks of the State Quarry stage. Of these there are known to be preserved only a few small, disconnected areas in Johnson county. These isolated beds occupy depressions formed by erosion in the limestones of Cedar Valley age. They have yielded few well preserved coral remains.

In the rocks of the Lower Carboniferous series, which generally succeed those of the Middle Devonian in Iowa, there is another abrupt change in the coral species which are encountered. The Carboniferous period supported no crowded seas which teemed with coral life, nor do there occur within our state any reefs of coral remains in the rocks of this later system. The deposits of the Augusta stage are best developed in the region embraced by the counties of Henry, Van Buren, Lee, Des Moines and Louisa. During this time the members of the group Tetracoralla greatly predominated. The old-fashioned types of the Hexacoralla had waned almost to extinction. Of the representatives of the former group there were present at different points over the above mentioned area the short, simple coral *Hadrophyllum glans* White, together with several species of Zaphrentis, including: *Zaphrentis centralis* Worthen, *Z. dalei* Edwards & Haime (plate IV, figure 4), *Z. elliptica* White, *Z. illinoisensis* Worthen, *Z. spergenensis* Worthen, *Z. varsoviensis* Worthen, and *Z. calceola* White & Whitfield. Besides the above there flourished *Amplexus fragilis* White & St. John, and *A. blairi* Miller; corals which differed from Zaphrentis in bearing more highly developed tabulæ and shorter septa.

Among the Hexacoralla this age produced the curious coral *Palacacis obtusa* Meek & Worthen, *Striatopora carbonaria* White, *Aulopora gracilis* Keyes and a species of *Syringopora*.

During the Saint Louis age, which succeeded the Augusta, there lived the largest and most elegant compound coral which the Carboniferous period produced, *Lithostrotion canadense* Castlenau (plate IV, figure 5). This beautiful form marks a definite horizon in the rocks near the base of the Saint Louis stage. The large compound coralla of this species are usually found silicified. They occur in masses from a few inches to several feet in diameter, the largest of which frequently weigh several hundred pounds.

They are found in great abundance near the towns of Salem and Mount Pleasant, in Henry county. In some localities, notably near Winfield, this compact form gives place to a less closely-growing species, *L. proliferum* Hall. Associated with the latter there grew in abundance a small, slender coral the surface of which was beset with spines, *Zaphrentis spinulosa* Edwards & Haime. Near the close of this age in Iowa the latter species of Zaphrentis was replaced by a larger type which was much more widely distributed, *Z. pellaensis* Worthen (plate IV, figures 1 and 2).

The only known representative of the Hexacoralla which flourished in Iowa during this age was an undescribed species of *Syringopora*.

With the advent of the Upper Carboniferous series the coral fauna had still more perceptibly waned both as regards numbers and the size of the coralla. The deposits of this epoch are encountered over an area, triangular in shape, the apex of which is formed by Webster county and the base by the southern border of the State. During the Missourian age there grew of the Tetracoralla the small simple species *Axophyllum rude* White & St. John, and *Lophophyllum proliferum* McChesney, and the much larger form, *Campophyllum torquin* Owen (plate IV, figure 3). The members of the Hexacoralla were represented by *Michelinia eugeneae* White, and a species of *Syringopora*.

With the close of the Paleozoic era the types of corals which constitute the ancient Tetracoralla passed away. During succeeding ages the descendants of some of these forms became more and more modified until their line seems to have culminated in the group Aporosa of the modern Hexacoralla, which is represented by the reef building corals of the present day.

The old-fashioned Tabulata of the Hexacoralla, whose members formed so conspicuous a part of the coral life in the Paleozoic seas, have long since disappeared and left no modern progeny.

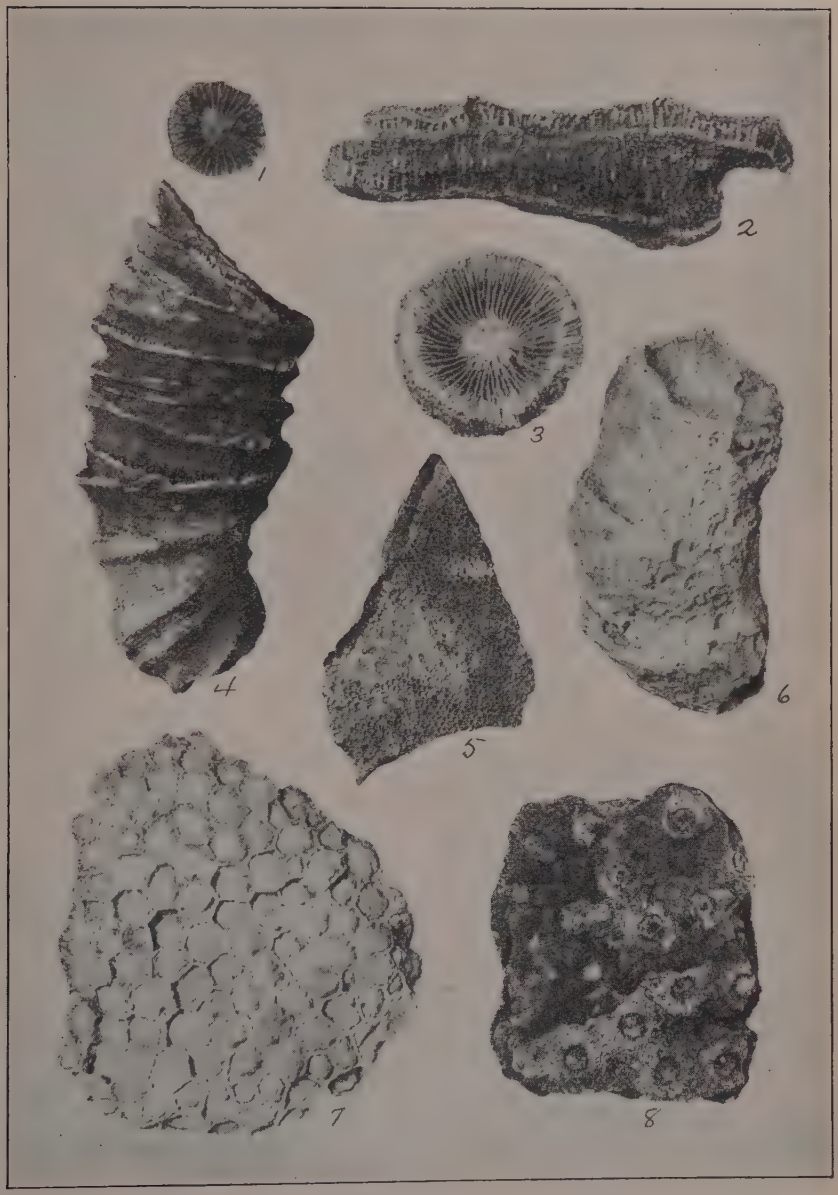



PLATE II.

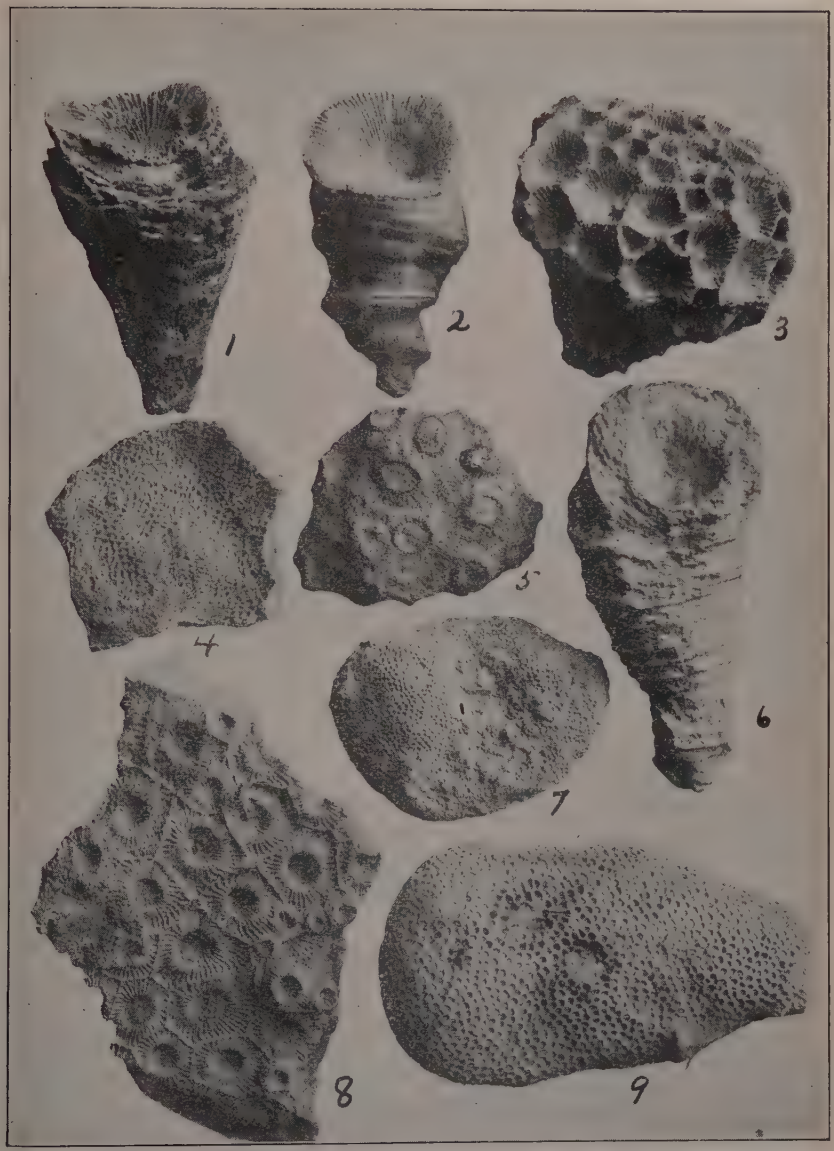



PLATE III.




PLATE IV.

These coral skeletons are more than curious relics of ages long removed. They are freighted with the story of the past and vocal with a message to the present. They tell us of time's lapses inconceivable. They show us many of the forms that have appeared and played their part upon life's stage, and disappeared beneath the dim horizon of the past. They witness to the plastic nature of life's substance, and to the laws of adaptation and growth which govern all its creatures. They disclose the massive masonry on which our state is built, whose giant courses were laid deep on the ocean's floor. They constitute some of the letters by which is spelled out the varied and eventful story of the earth and of its life. They help to make intelligible the past, and to reveal the meaning of the present, and thus in no mean measure they contribute to the intellectual life of man.

## EXPLANATION OF PLATE II.

*Types of Niagara Corals.*

Fig. 1. Streptelasma patula Rominger.
Fig. 2. Syringopora fibrata Rominger.
Figs. 3 and 4. Ptychophyllum expansum Owen.
Fig. 5. Favosites hisingeri Edwards and Haime.
Fig. 6. Cystiphyllum niagarense Hall.
Fig. 7. Favosites favosus Goldfuss.
Fig. 8. Strombodes mamillare Owen.

## EXPLANATION OF PLATE III.

*Types of Devonian Corals.*

Fig. 1. Ptychophyllum versiforme Hall.
Fig. 2. Heliophyllum halli Edwards and Haime.
Fig. 3. Acervularia profunda Hall.
Fig. 4. Alveolites goldfussi Billings.
Fig. 5. Pachyphyllum woodmani White.
Fig. 6. Cystiphyllum americanum Edwards and Haime.
Fig. 7. Favosites placenta Rominger.
Fig. 8. Acervularia davidsoni Edwards and Haime.
Fig. 9. Favosites alpenensis Winchell.

NOTE: The individuals from which figures 2, 6 and 7 were photographed were not collected in Iowa, but these species are not rare in the state.

## EXPLANATION OF PLATE IV.

*Types of Carboniferous Corals.*

Figs. 1 and 2. Zaphrentis pellaensis Worthen.
Fig. 3. Campophyllum torquin Owen.
Fig. 4. Zaphrentis dalei Edwards and Haime.
Fig. 5. Lithostrotion canadense Castlenau.

# PIONEER PERILS.

## II.

### THE CEDAR RIVER GANG OF OUTLAWS BROKEN UP—MRS. JOHN WEARE AND THE WOUNDED OUTLAW CHIEF—AN INCIDENT OF THE FORTIES.

The great immigration of 1849 was preceded by a period of outlawry which compelled Iowa citizens and property owners to organize in defense of their lives and property. The men who made up such organizations were everywhere known by the significant term "Regulators." The findings of the improvised court of Judge Lynch were by common consent exempt from appeal.

In the memorial volume of the late William Williams Walker, dedicated to the memory of John Weare, a pioneer of Cedar Rapids, from which extract was made in the July issue of THE ANNALS, occurs an interesting incident which throws a strong side-light upon the period of outlawry immediately preceding the tidal wave of immigration that set in three years after the territory of Iowa became a State. Following his custom the biographer lets Mr. Weare tell his own story in his own excellent way, which story, somewhat condensed, is as follows:

J. B.

All winter, it had been evident that we had in our midst some persons who were giving aid and comfort to the outlaws; but we were not able to identify them or put a stop to their work. In the spring, one of the "Regulators" joined the outlaws, and so learned that a party on a certain night would pass Cedar Rapids, conveying a large amount of stolen goods to their cave on the bank of the Cedar River, at the point known as "The Palisades." Plans were made by the Regulators to intercept this company, on their way through Cedar Rapids, capture the goods and the thieves and bring them to justice. We greatly desired to secure their leader, a desperate Missourian. The Regulators were stationed along the road where the outlaws were expected to pass. When the band stole into the guarded road, at a given signal they were surrounded, and nearly captured; but they fought like tigers. In the contest the leader escaped, although he was known to be wounded. All the plunder was seized and most of the outlaws were captured.



MRS. MARTHA PARKHURST WEARE.
First wife of John Weare. From a daguerreotype in possession of Mrs. Weare's daughter, Mrs. W. W. Walker.

After seeing the gang lodged in our block house—built for defense from the Indians—I returned home, not more than half satisfied with our night's work. My wife met me at the door with the information that one of the Regulators from Marion, who had been wounded in the attack, had started home and found himself too weak from loss of blood to go on. Knowing mine was the house of a friend, he sought its shelter, and had gone to bed in our room. I made haste to go to the man, wondering who he could be. By the "Law Harry!" there lay, in my own bed the leader of the outlaws!

It swept over me in a moment, his whole audacious plan. When he knew how badly he was wounded, he made straight for my house, knowing I was not at home, and that any sufferer had but to let his sufferings be known to my wife and he would have a friend. I was greatly enraged with him, but my wife pleaded for him. She knew he would be hung by the Regulators. With all this in mind I spoke to him. He answered and, looking me straight in the eye, said, "John, you're not the man to strike even a dog when he's down."

I went right out and called a physician, and my wife, the doctor, and I took the best care we could of him. He died the next night. The doctor got a coffin from a cabinet-maker, telling him he wanted it for a woman who had died up the river, and would take it himself. In the dark of the early morning hours he brought the coffin to our house, and we put the body and all the belongings, excepting the gun and a few valuables, into it. Doctor and I drove to the little burying ground, on the way to Vinton, and dug a grave in a corner of it and covered it with brush.

These facts remained a secret for many years. I afterwards gave the gun and other valuables to the son and daughter of this man, and went with them to the place where we laid him. I think the earth has never been disturbed in that spot, and not a few persons wonder how he could have vanished and never left any trace of himself.

# ANNALS OF IOWA.

## EDITORIAL DEPARTMENT.

### GENERAL FITZ HENRY WARREN.

Hon. Edward H. Stiles, sometime reporter of the decisions of the Supreme Court of the State, presents his recollections of this distinguished statesman and soldier in this number of THE ANNALS. He revives almost forgotten memories in a way that is very interesting reading. Throughout the fifties, and well into the sixties, Gen. Fitz Henry Warren was one of the best known and most distinguished Iowans aside from the Congressional delegation and our governors. He was a man of a rare personality, erect, tall, with a soldierly and commanding figure, a striking and handsome presence, whether seen in social life, in the Senate, on the rostrum, or mounted and at the head of his magnificent regiment. Then, he was scholarly, widely learned, a clear, vigorous, incisive and often sarcastic writer, who during his time had no superior, nor, indeed, an equal in Iowa. At the outbreak of the civil war he was a correspondent of *The New York Tribune*, at Washington. As Mr. Stiles so lucidly sets forth, he believed an immediate movement upon Richmond would speedily end the rebellion. Letters and editorials appeared in that great paper with the striking heading—"On to Richmond!" He certainly wrote the letters and doubtless many of the editorials. Finally, the movement was started only to meet with defeat in the battle of Bull Run. As the Union forces were disastrously and ingloriously discomfitted, the loyal people of the country felt outraged at the course of *The Tribune*, which seemed to be responsible for precipitating this untoward result. Of this battle Gen. Sherman wrote years afterward that "it was

one of the best-planned battles of the war, and one of the worst fought." It was a case in which some one had to be made a scape-goat. Public opinion pointed to Horace Greeley, editor of *The Tribune*, as the author of the calamity to the Union cause—the name of Fitz Henry Warren not appearing in the correspondence—and rival journalists aided to the best of their ability in "piling up the agony." Although it came to be understood that General Warren represented *The Tribune* in Washington, Mr. Greeley heroically accepted for himself and his journal the fullest measure of responsibility. He wrote, "If I am needed as a scape-goat for all of the military blunders of the past month, so be it."

General Warren was soon relieved from his place on the staff of *The Tribune*. Afterward, in the time of Charles A. Dana, he became an editorial writer on the *New York Daily Sun*. Like his distinguished chief, he wielded a most caustic pen, and many politicians and some statesmen became victims of his withering sarcasm. But these often fierce philippics are now only remembered by those who have survived from that stormy period of our national politics. In the files of *The Tribune* and *Sun* they will be scanned by historians of the future as throwing light upon those times.

As a legislator, General Warren was useful, influential, and highly respected, though he served but a single session in the senate. He "fell from grace" with his party by going over to the support of President Andrew Johnson. After his return from his mission to Guatemala he resided for the most part in the east, leading a very quiet life the remainder of his days, Our fine steel portrait of General Warren originally appeared in Captain Stuart's Iowa Colonels and Regiments.

## PRESIDENT JOHNSON'S ACCUSERS AND THE "SALARY GRAB" OF 1873.

On the third ultimo Harper's Weekly contained a striking article entitled, "From the Presidency to the Senate," in which is vividly described Andrew Johnson's return to the Senate of the United States after his tempestuous career as President. The writer is Mr. Julius Chambers (quondam editor of *The New York World*) who seems to have been at once an eye-witness of the dramatic event and a most ardent friend and admirer of President Johnson. His article is largely a series of vicious stabs (albeit picturesquely delivered) at Johnson's enemies and accusers in the then recent impeachment trial. Much of the article we suspect gets within close range of libel—at least, such surely is the case with the following statement which contains a gross imputation upon a distinguished Iowan which is absolutely without shadow of justification:

> "The indictment [viz. the articles of impeachment] was prepared," says Mr. Chambers, "by seven partizans, every one of whom, remaining alive and in Congress, afterward participated in filching $1,125,000 from the people under the pretext of 'back pay.'"

Let us see. The committee of the House that presented the bill of indictment before the Senate consisted of seven men, most of whom had achieved distinction as members of the House. They were John A. Bingham of Ohio, George S. Boutwell and Benjamin F. Butler of Massachusetts, James F. Wilson of Iowa, Thomas Williams and Thaddeus Stevens of Pennsylvania, and John A. Logan of Illinois. What part did these men play in the passage of the "back pay" appropriation or "salary grab," as it was generally designated?

In the closing days of the 42d Congress in 1873, General Butler of Massachusetts introduced a bill increasing the salaries of the members of Congress from $5,000 to $7,500 per annum. This bill, proper enough in itself, had a

"chequered and discreditable career." Instead of having it referred to the committee on appropriations to which it should have been committed for consideration preliminary to submission to the House for passage, the bill was referred to General Butler's own committee, that on judiciary. The bill aroused much general criticism—so much that it was soon apparent that it could not be passed on its own merits. Thereupon in the closing hours of the session the friends of the measure resorted to the legislative trick of attaching its provisions as a "rider" to the great budget-bill known as the Executive, Legislative and Judicial appropriation bill. In the course of these proceedings a retroactive clause was added making the salary provision apply not only to future congressmen but to the members of that Congress. In other words, Congress voted itself an increase of pay amounting to $5,000 for each member—a performance that justly aroused a nation-wide storm of furious criticism and denunciation.

Mr. Chambers is guilty of gross negligence or serious lapses of memory in his sweeping charge that all those who conducted the case against President Johnson were involved in the salary grab. In 1868, not long after the trial, Thaddeus Stevens died. Mr. Williams did not return to Congress after 1869. Geo. S. Boutwell became Secretary of the Treasury March 11, 1869, and continued in that office until March 16, 1873, when he entered the Senate. And our own James F. Wilson retired from Congress in 1869 not to return until his elevation to the Senate in 1882. So that of the seven members of the Johnson committee, Mr. Chambers is in flagrant error as to four. There were but three of its members present and voting in the session of the 42d Congress that passed the Back-Pay bill—Bingham, Butler and Logan. They, however, voted for it. Here it may not be irrelevant for us to note the almost solid chorus of "Noes" that came from Iowa's delegation, when the famous "rider" was on its passage: Senator James Harlan, "Not

voting"; Senator Geo. G. Wright, "No"; Representative George W. McCrary, "No"; A. R. Cotton, "No"; W. G. Donnan, "No"; M. W. Walden, "No"; F. W. Palmer, "No"; and Jackson Orr, "No." Mr. Wm. G. Donnan, now, as then, an honored citizen of Independence, Iowa, just before the vote was to be taken upon the obnoxious measure, rose in his place and addressing the speaker said, "I ask that the rule be read which prohibits members from voting on a question in which they are interested." The Speaker (Mr. Blaine), with more promptness than logic, declared, "That has no application here whatever." So it seemed. Congress at its next session proceeded forthwith to repeal the law.

It is possible that Mr. Chambers had in mind the members of the House committee on "Reconstruction" that first reported in favor of an impeachment (February 22, 1868), composed of Thaddeus Stevens, Boutwell, Bingham, C. T. Hulburd, John F. Farnsworth, F. C. Beaman, and H. E. Paine. But here again he errs. Except those already considered Farnsworth was the only member present March 3, 1873, and he voted "No." Or Mr. Chambers may have had in mind the committee appointed to draw up the articles of impeachment which consisted of Boutwell, Stevens, Bingham, Wilson of Iowa, Logan, George W. Julian of Indiana, and Hamilton Ward of New York. But here too his memory slips. Neither Mr. Julian nor Mr. Ward took part in the vote on the salary bill for the reason that neither gentleman was in that Congress.

Mr. Chambers makes the oft-repeated mistake of the over zealous. In his laudable desire to defend a friend who suffered sadly at the hands of perverse and fitful fates, he recalls only his virtues and his wrongs. He can see only the defects of his opponents: all of their actions he sees through glasses colored with memory's fond recollections of that friend. The times and the infinite crisscross of men's affairs their crowding and clashing interests and their influence on men's actions he for the time forgets, and to exalt that

friend whom the public had wronged he likewise does wrong to others. It is not necessary to pervert history or overstate or underestimate events to recompense Andrew Johnson or to restore to him his rights and proper place in history. Neither should his advocates forget that Johnson largely brought his troubles on himself.

Andrew Johnson was of gigantic size in mental and moral stature. His large mould was fit for the rough and stormy politics that prevailed in ante-bellum days. When the great cleavage came in 1861 he stepped boldly away from friends and associates and espoused the Union Cause when it took not only physical courage but heroic moral character to keep one's courage to the sticking point. And in the titanic struggle which followed he did his country's cause yeoman service. But as with all strong characters he suffered from the defects of his virtues. His was a nature stubborn, stiff-necked. He could crash through hosts of enemies and scatter them by his terrific onslaught, but he could not deal easily with friends and party workers. Opposition he would beat down by frontal attacks, not dissipate or utilize it by skillful maneuvers as does the tactful politician and statesman. Suddenly put at his country's helm when the seas were tempestuous his irascible temper, his tactless, impolitic conduct and stubborn refusal to pursue diplomatic courses wrecked his own career and almost hurled the ship of state on the rocks.

But all the virtues did not appear with the opposition to President Johnson. The charges against him were not all well considered. The trial was pushed with strange disregard of the defendant's rights and indefensible speed. But the times were out of joint. Passions were hot. The air was surcharged with suspicion and dread and malevolent hate that the turmoil of fratricidal war always engenders. Seen through such a medium, all things, all acts were distorted, mistakes and intentions magnified, minimized, perverted according to one's point of view in the controversies

that split the air. No one in particular was chargeable with the blunders that were made. All were at fault and recriminations now are futile. Let us rejoice rather that the one great mistake was not committed. And here again we of Iowa may well look aloft, because among the clear-eyed men who saw the dangers to the nation in the storms that were raging about them and staunch in their high-minded patriotism stood steadfast against wrong courses was James W. Grimes, the illustrious Senator from Iowa. H.

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## TERRITORIAL JOURNALS MISSING.

We do not miss things till we want them. Then we suffer astonishment and aggravation to find that data or documents that we supposed easily accessible are not obtainable. This rather prosaic platitude is suggested by a footnote in Professor Herriott's article on "Legislation in Iowa Prior to 1858" in this number of THE ANNALS. At the bottom of his statistical table (No. I), showing the bills introduced in the legislature and the laws passed and vetoed during the days of the territory, he states that the Journals of the Proceedings of the Council and House of Representatives of the Legislature that convened in extra session in July, 1844, are not only unprinted, but what is worse the originals can not be found in the office of the Secretary of State. The fact that the Journals were not printed is not strange. Nor would it be more than an inconvenience to the public and to scholars if the originals were safe and sound among the State's archives. It will be recalled that the Historical Department in 1902 printed for the first time the Journals of the two houses in the special session in 1840. But if the Journals are lost beyond recovery it is a loss of very serious character. So great is it that we are prone to hope that further diligent search will result in the discovery

and restoration of the official journals to their proper place in the files.

It seems needless to emphasize the urgent necessity that always exists for carefully preserving the original papers and all accompanying documents pertaining to the official transactions of each and all departments of government no matter to what office or department or division of government they may relate, whether legislative, judicial or executive, whether State or local. Upon the sanctity and preservation of official records depend, constantly, human life, prosperity and happiness. The efficacy of laws, titles to property, the integrity of families, the assurance of character and reputation to men and women, rest secure only when our public archives contain, safe from fire, rust, mould and disturbance, the official records that show the actions relative thereto, that show the beginnings, development, conditions and guarantees of title to rights. How many laws have been set aside by the courts in recent years because the exhibits of legislative journals have shown that the requirements of the constitution have been ignored or infringed! They have been not a few. Now this means that millions of dollars in property rights, untold human happiness or misery and incalculable disorganization in business and industry, rest upon the due preservation of official records in our public archives.

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## A FORTHCOMING BOOK.

Sometime during the remainder of the year a book will be published in Cedar Rapids which will possess much interest to the students of early Iowa and western history. The work will be brought out by the "Ioway Club," an organization of four gentlemen of that city who intend to issue a series of historical publications of which this will be the first. In the main it is a reprint of "Notes on the Wis-

consin Territory, particularly with reference to the Iowa District, or Black Hawk Purchase, by Lieutenant Albert Miller Lea, United States Dragoons. With the Act for Establishing the Territorial Government of Wisconsin with an accurate Map of the District." The author describes this as "a duodecimo little book of forty-five pages, prefaced by a letter commendatory from Gen. [Geo. W.] Jones, of which one thousand copies with the map were put up by my friend H. S. Tanner, to whom I paid thirty-seven and a half cents per copy, and put them on sale at one dollar." He adds, however, that other matters claimed his attention and that their distribution was neglected. One half of the edition was shipped on an Ohio and Mississippi river steamboat and never heard from. Only a few copies reached the west, and for all his labor and expense he avers that he never received one dollar.

It is this little work, issued in the year 1836, that is now to be reprinted. It has long been a scarce book and only met with occasionally in the possession of collectors and historical libraries. It gives a general description of what was then known as "the Iowa District," an area of territory "about 190 miles in length, 50 miles wide near each end, and 40 miles wide near the middle, opposite to Rock Island." Lieut. Lea presents very full information in regard to the soil, climate, general appearance of the country, its products, mines, timber, agriculture, game, population, trade, government, land titles, water courses, towns, roads, etc., etc.

The book will include a biographical sketch of Albert Miller Lea, by his daughter, who now resides at Corsicana, Texas; his highly important official report to the commissioner of the general land office on the southern boundary of the Territory of Iowa; together with notes of his public addresses and extracts from his personal letters. It will be illustrated with his portrait and an engraving of his map, which accompanied the official report. The primitive method of spelling the name of this State was "Ioway."

In one of his letters he states that in making his map he dropped the "y," that being the first appearance of our modern spelling in any publication. It will in future be necessary to refer to his report above mentioned for a correct history of the origin of the boundary dispute between Iowa and Missouri.

The career of Lieut. Albert Lea was a most interesting one. Though he rose to no high distinction, his name will have a permanent place in the early history of Iowa and Minnesota. He was appointed to West Point Military Academy from the State of Tennessee, July 1, 1827, and graduated fifth in his class of thirty-three, July 4, 1831. He was immediately promoted to brevet second lieutenant of the 7th United States Regular Infantry. His first service was on topographical duty from 1831 to 1834, when he joined the 1st Dragoons at Fort Des Moines, No. 1, near the present site of the village of Montrose. That old regiment was then commanded by Col. Henry Dodge. He resigned from the army in 1836. From that time forward his labors were generally in the direction of civil engineering, building railroads, etc., until the outbreak of the civil war, when he joined the southern army. His service as a confederate soldier was in the engineering department, and as commissary of subsistence, and therefore inconspicuous. It was understood that he was disliked by Jefferson Davis, who prevented his promotion and thus left an accomplished officer to duties of mere drudgery. After the rebellion he became city engineer of Galveston, Texas. He was at one time Chief Clerk of the War Department, serving also for a short time as Acting Secretary of War. The record of his life is reasonably full and complete, and will be fully comprised in the forthcoming publication. This book will be printed on hand-made paper and issued only to subscribers, in a limited edition, as an undertaking by a private book club. It will be well for those desiring a copy to enter their subscriptions now with Mr. A. N. Harbert, Cedar Rapids, Iowa.

# CORRESPONDENCE.

## THE SHILOH CONTROVERSY.

My Dear Sir:—In compliance with your request to be furnished with a brief statement of the facts with reference to the controversy over the inscriptions to be placed upon the monuments of the 15th and 16th Iowa regiments upon the battlefield of Shiloh I submit the following as showing all the essential facts in the case:

Each member of the Iowa Commission was required to prepare an inscription reciting the service performed by his regiment during the battle, the number of men engaged, the losses sustained, the name of the officer, or officers, who commanded the regiment, and the time and place where they fought the longest and suffered the greatest loss. These inscriptions were to be submitted to the National Commission which reserved the right to revise and correct them, so that they should conform to the official reports on file with the War Department at Washington. I think there were some slight, but unimportant changes made in most, if not all, of the inscriptions originally submitted, and in the case of the 15th and 16th regiments a most radical change was made as to the time those two regiments occupied the positions at and near where their monuments are located. The Commissioners for those two regiments refused to accept the change ordered by the National Commission as not being in accordance with the official reports of Colonels Reid and Chambers on file with the War Department and which had stood unquestioned for over forty years as the history of the service rendered by their regiments in the battle of Shiloh. The inscriptions as changed by the National Commission were submitted to the Secretary of War and by him referred to an officer of the War Department for investigation. The report of this officer sustained the contention of the National Commission, and the inscription they had submitted was approved by the Secretary of War. The Iowa Commission, at this stage in the proceedings, decided to submit the case to Governor Cummins, and through him secure, if possible, a rehearing of the case. The Governor was successful in securing the rehearing, and on the 20th of May, 1904, he presented the case to the National Commission in an exhaustive argument. That Commission after mature deliberation, has again rejected the contention of the 15th and 16th regiments as to the time in which they were engaged. Governor Cummins has again asked for the opportunity to present the matter to the Secretary of War on appeal from the decision of the National Commission, and his request has been granted. Pending the final determination of this controversy the splendid monuments which have been erected by the State of Iowa upon the battlefield of Shiloh cannot be dedicated. They are all fully completed, except those of the 15th and 16th regiments, and they lack only the attaching of the bronze tablets reciting the history of their service in that great battle.

Yours very truly,

Hon. Charles Aldrich,
Des Moines, Iowa.

G. W. Crosley,
*Commissioner for 3d Iowa Infantry and Secretary of Committee on Dedication of Monuments.*

# NOTABLE DEATHS.

JOHN JACKSON SELMAN was born in Franklin county, Alabama, January 17, 1818; he died in Bloomfield, Iowa, September 27, 1904. He grew to manhood on his father's farm, receiving his education at Perryville Institute, near St. Genevieve, Missouri. He began the study of medicine with an older brother, Dr. S. H. Selman, who had settled at Columbus, Indiana. He graduated from the Medical College of Ohio, in 1837, and practiced his profession at Rushville, Indiana, but in 1841 removed to Jackson township, Van Buren county, Iowa. Three years later he migrated to Davis county, and located a land claim three miles west of the present city of Bloomfield. Here he resumed the practice of medicine, in which he continued up to a short period before his death. He attained a wide and enviable reputation as a physician and surgeon. He was the oldest physician in his county and had especially endeared himself to the pioneer people. He was elected a member of the constitutional convention of 1846, of which body he is understood to have been the last survivor. He was elected to the State senate of the First General Assembly, which convened at Iowa City, November 30, 1846. In the classification which obtained at that time he drew the short term of two years. He was re-elected and on December 5, 1848, was chosen president of that body—the office of lieutenant-governor and president of the senate not existing until the adoption of the constitution of 1857. In 1850 he resumed his seat as senator, with the addition of Wayne county to his district. Of his associates in the Senate of 1848, Hon. P. M. Casady of Des Moines is believed to be the last surviving member. In 1848 he was one of the four Iowa Presidential electors and his vote with the others was cast for General Lewis Cass for President of the United States. This last service closed his political career, though he continued throughout his life to take a deep interest in the public affairs of Davis county. Among his personal friends he was always proud to remember James Harlan, George W. Jones, George G. Wright, Gov. W. M. Stone, and War Governor Samuel J. Kirkwood.

JAMES CALLANAN was born in Albany county, New York, October 20, 1820; he died in Des Moines, Iowa, September 26, 1904. The records state that, after a thorough education, he studied law and was admitted to the bar in 1847, and for some years had a large practice in Albany. In 1857 he formed a co-partnership with Col. Schuyler R. Ingham and opened the banking house of Callanan & Ingham in the city of Des Moines. Mr. Ingham was the resident member, Mr. Callanan residing in the east. This firm was continued until 1861, having acquired a large amount of real estate. So much of this property came into his hands through this change that it became necessary for Mr. Callanan to remove to Des Moines, which he did in 1863. From that time until his death he has always taken a deep interest in the welfare of the capital city, aside from being identified with many of its prominent business interests. After the Ingham partnership he was for a time associated with James C. Savery in the purchase and sale of lands and in acquiring titles to many hundreds of acres of swamp lands. It is also stated that he invested largely in tax titles under the revenue law which was passed in 1860. These ventures have always been understood as having been highly profitable. Mr. Callanan was a humane man and a liberal giver to various educational and benevolent enterprises. The Home for the Aged, Callanan College, and the Home for Friendless Children, Des Moines, and Penn College at Oskaloosa, were among the recipients of his bounty. Two or three years ago he accepted the presidency of the Iowa Humane Society. Of this latter distinction he was always especially proud. It is related of him that humane treatment of

birds and dumb animals was one of the most distinguishing characteristics of his later years, and many anecdotes are told of him illustrative of his unvarying tenderness for these objects of his solicitude.

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Charles H. Lewis was born October 17, 1839, at Collins Centre, Erie county, New York; he died at Sioux City, Iowa, September 26, 1904. He came with his parents to Independence, Iowa, where they settled in 1851. The greater portion of his boyhood was spent upon his father's farm and in a furniture factory. At the age of 19 he entered Cornell College, at Mt. Vernon, where he remained until 1862, when he enlisted as a private in Co. H, 27th Iowa Infantry. At the end of his first year he was promoted to Sergeant-Major of his regiment. At the expiration of another year he became First Lieutenant, and was later commissioned as Adjutant of the regiment, in which rank he was mustered out of the service at the close of the war. Upon his return from the army he engaged in merchandizing in Buchanan county, but finally entered the law department of the State University from which he graduated in 1869. He practiced his profession for a short time in Cherokee, Iowa, but in 1870 was nominated for District Attorney of the 4th Judicial District, which then comprised twenty-two counties in the northwestern part of the State. In this capacity he served from 1871 to 1875. At the election in 1874 he was nominated and elected District Judge, his term commencing January 1, 1875. At the end of his first term he was re-elected and chosen again four years later. He thus served twelve years on the bench. At the expiration of his last term of office he resumed the practice of the law in Sioux City, where he resided up to the time of his death. He was a leader in his profession, and well known throughout northwestern Iowa. In a published interview, Craig L. Wright spoke as follows of the deceased jurist: "Personally he was the most lovable of men to those whom he knew well. His character was one of the purest, and mere contact with him left a marked impress. I have always had the highest regard for him as a lawyer and a judge. Before the bar he was stronger in consultation than as an advocate and was one of the most learned men who ever practiced in this State."

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George R. Pearsons was born in Bradford, Vermont, August 7, 1830; he died in Fort Dodge, Iowa, July 14, 1904. Mr. Pearsons was one of the best known pioneers in the State, having located in Fort Dodge in 1868. For a large part of his life he was connected with railroads; he helped to construct the Fort Dodge & Fort Ridgley road at an early day, and became its superintendent. He contracted with the government to drain Owl Lake, Humboldt county, and in payment received 3,000 acres of lake bed land. He was elected Mayor of Fort Dodge in 1873 and again in 1890. In 1885 he was appointed Indian Inspector and as such made an enviable record as one who instituted much needed reforms in the Indian agencies and schools. He was father of Mrs. J. P. Dolliver, and brother of Dr. D. K. Pearsons, the Chicago philanthropist.

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James D. Barr was born in Brandenburg, Kentucky, July 13, 1835; he died in Wapello, Iowa, July 9, 1904. He was the pioneer citizen of Wapello, having settled there in 1842 and lived there continuously for over 62 years. He was in newspaper work from 1850 to 1896; and was connected with the first paper published in Louisa county. During the war *The Wapello Republican* owned and published by him, was one of the most radical papers in the State. He afterward, with Thomas N. Ives, founded *The Louisa County Record*. He was a fearless and honest writer and devoted to the best interests of his town and State. He was married in 1857 by Dr. William Salter to Miss Louisa A. Jenkins.



THE BIRTHPLACE OF GOVERNOR JAMES W. GRIMES, ON HIS FATHER'S FARM,
NEAR HILLSBOROUGH BRIDGE (DEERING), N. H.